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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

***Ex Parte* KENDALL H. BREEDLOVE,**

Petitioner

ex relatu

Breedlove v. Phillips, et al.,

ex relatu

Breedlove v. Hart, et al.

PETITION FOR WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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103 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the federal courts below violate the Fifth Amendment's Due Process Clause, or deny Petitioner equal protection under law or deny procedural due process, either by judicial error, or by judicial bias, or by actual judicial malice, or by criminal tampering, by federal court employees, of the federal court record on appeal in the instant action?

2. Does either (a) the Virginia mechanics' lien law (*i.e., Virginia Code (1950)*, as amended, *§43-1* through *§43-23.2*), or (b) associated Virginia judicial procedures (as set forth in *Ayyildiz, M.D. v. Kidd*, 220 Va. 1080, 266 S.E.2d 108 (1980) and in *Donohoe Constr. Corp. v. Mount Vernon Assoc.*, 235 Va. 531, 369 S.E.2d 857 (1988)), on their faces, violate the Fourteenth Amendment's Due Process and Equal Protection Clauses, or Article I, § 11, of the Virginia Constitution, or the U.S. Supreme Court's holding in *Connecticut v. Doehr*, 501 U.S. 1, 115 L.Ed2d 1, 111 S.Ct. 2105 (1991)?

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I. *The Fourth Circuit court of appeals: (1) deprived the Petitioner of his federal constitutional rights of equal protection under law and of due process; (2) deprived the Petitioner of his federal civil rights under 28 USC §1291, 28 USC §2403 (b), 28 USC §2284, and under 28 USC §1738, F.R.E. 901 and F.R.E. 902, taken together; (3) violated the U.S. Supreme Court's holdings in* Coleman v. Thompson, *and* Ward v. Board of County Comm'rs*; and (4) denied the Petitioner procedural due process (dismissing under nonexistent Fed. R. Civ. P. 4 (m) and refusing to effect correction of the false, fraudulent, tampered, incomplete,* uncertified *record on appeal)—in that, the Fourth Circuit court committed wilful, overt acts against the Petitioner and against the Petitioner's causes of action, which overt acts constitute not only prejudicial, reversible error, but also demonstrate the court's bias against the Petitioner and the court's actual malice against the Petitioner and against the Petitioner's causes of action to have an* ex parte *determination of the constitutionality of the Virginia mechanics' lien law, as an entitlement under* Ex Parte PORESKY, supra. *15*

II. *The Fourth Circuit court of appeals committed prejudicial, reversible error, denied procedural due process, denied equal protection under law, and demonstrated bias and actual malice by violating repeatedly the U.S. Supreme Court's holding in* Coleman v. Thompson, supra, *in three respects* *17*

III. The Fourth Circuit court of appeals committed prejudicial, reversible error, denied procedural due process, denied equal protection under law, and demonstrated bias and actual malice by violating the holding of the U.S. Supreme Court in Ward v. Board of County Comm'rs, supra, *by disregarding the Court's duty (neglecting or renouncing a jurisdiction conferred by law), after the Fourth Circuit court possessed* in personam *jurisdiction as to all parties, by general appearances and/or by notice comporting with due process and with 28 USC §2403 (b)*.....18

IV. The Fourth Circuit court of appeals committed prejudicial, reversible error, denied procedural due process, denied equal protection under law, and demonstrated bias and actual malice: (1) by affirming improperly the lower court's failure to discharge its jurisdictional 28 USC §2284 duties; (2) by affirming improperly the lower court's failure to discharge its jurisdictional 28 USC §2403 (b) duties; (3) by itself failing, sua sponte, and by refusing (upon written motion) to discharge its own, jurisdictional, 28 USC §2403 (b) duties; and (4) by affirming the November 18, 1994, dismissal order *of the lower court and by itself issuing the June 19, 1995,* opinion *and August 10, 1995,* order *denying rehearing, each of which three orders is void for lack of jurisdiction to dismiss*.....19

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Note: Concurrent challenges are not the same claim in two federal courts. Some challenges are "on its face," some are "by its application."

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IN THE
SUPREME COURT OF THE UNITED STATES

Ex Parte KENDALL H. BREEDLOVE,

Petitioner[1]

PETITION FOR WRIT OF CERTIORARI TO THE U. S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

Kendall H. Breedlove, the Petitioner in this appeal, respectfully prays that a *writ of certiorari* issue to review the judgments of the United States Court of Appeals for the Fourth Circuit, entered in the above-titled case on June 19, 1995, and August 10, 1995.

OPINIONS BELOW

1. The June 19, 1995, decision of the Fourth Circuit court of appeals dismissed Petitioner's *Brief for the Appellant*. This June 19, 1995, *opinion* is one of the decisions appealed herein to the U.S. Supreme Court and the June 19, 1995, *opinion* is reprinted as Appendix Exhibit 2, at pages A3-A4.

2. On its face, the June 19, 1995, *opinion* fails to set forth the written determinations required by the U.S. Supreme Court's holding in *Coleman v. Thompson*, 501 U.S. 722, 115 L.Ed.2d 640, 111 S.Ct — (1991), that the dismissal decision, *itself*, not on a fair and substantive basis, does not abridge any constitutional rights.

3. On its face, the June 19, 1995, *opinion* fails to set forth that the Fourth Circuit court of appeals discharged its mandatory, statutory duties under 28 USC §2403 (b), but rather

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[1] The complete caption of the instant *ex parte* action, as originally filed, is *Ex Parte KENDALL H. BREEDLOVE, ex rel. Breedlove v. Phillips, et al., ex rel. Breedlove v. Hart, et al.* Through administrative tampering of the record, but without any judicial action, the caption was altered by federal court employees variously to "Breedlove v. Hart, et al," in court dockets, and to "Breedlove v. Phillips. et al.," in orders—the captions of two closed, *ex relatu* Virginia state court cases—and, finally, upon appeal to "Breedlove v. Hart; Phillips," which had the effect of concealing the *ex parte* nature of the instant action behind an administrative misrepresentation of the case as a *bi partes* suit. The significance of the creation of the false appearance of a *bi partes* suit is understood in light of the federal district trial judge's show-cause order for the Petitioner to show cause why Petitioner had failed to serve the "defendants" in an action which was, in fact, *ex parte*.

denies the Petitioner's motion for 28 USC §2403 (b) certification and notification in the court's footnote to the June 19, 1995, *opinion*.

4. The August 10, 1995, decision of the Fourth Circuit court of appeals denied Petitioner's *Petition for Rehearing*, dated July 1, 1995. This August, 1995, *order* is one of the decisions appealed herein to the U.S. Supreme Court and the August 10, 1995, *order* is reprinted as Appendix Exhibit 3, at page A5.

5. On its face, the August 10, 1995, *order* fails to set forth the written determinations required by the U.S. Supreme Court's holding in *Coleman v. Thompson, supra*, that the denial of the *Petition for Rehearing*, letting stand the June 19, 1995, dismissal decision, not on a fair and substantive basis, is a decision which, *itself*, does not abridge any constitutional rights.

6. On its face, the August 10, 1995, *order* fails to set forth that the Fourth Circuit court of appeals discharged its mandatory, statutory duties for 28 USC §2403 (b) certification and notification invoked by the Petitioner's challenge to the constitutionality of the Virginia mechanics' lien law, contained in the *Petition for Rehearing*.

JURISDICTION

The judgment of the U.S. Court of Appeals for the Fourth Circuit, denying Petitioner's *Petition for Rehearing*, dated July 1, 1995, was entered August 10, 1995. The jurisdiction of this Court is invoked pursuant to 28 USC §1254.

NOTICE CONCERNING 28 USC §2403 (b)

This Petition contains a challenge to the constitutionality of one or more of Virginia's statutes—the Virginia mechanics' lien law, specifically *Virginia Code (1950)*, as amended, *§43-1* through *§43-23.2*—in an action in which no officer or representative of the State of Virginia is a named party defendant. As such, this *petition* invokes the mandatory procedures prescribed for federal courts by 28 USC §2403 (b), for the U.S. Supreme Court to certify the challenge to the constitutionality of one or more Virginia statutes and to notify the Attorney General of Virginia, which procedures are not subject to any judicial discretion.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment of the United States Constitution, as follows:

"* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.** "

And the Fifth Amendment of the United States Constitution:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation."

Also involved is Article I, § 11, of the Virginia constitution:

"That **no person shall be deprived of his life, liberty, or property without due process of law**; ... that in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. * * * "

Also involved are Virginia's mechanics' lien statutes, *Virginia Code (1950)*, as amended, *§43-1* through *§43-23.2*.

STATEMENT OF THE CASE

1. Petitioner Breedlove suffered significant deprivations of constitutionally-protected rights resulting from private individuals, Phillips, *et al.*, filing—under Virginia's mechanics' lien law—two false, fraudulent, forged, perjured mechanics' liens; maliciously and for extortionate purposes, in the name of a not-in-life fictitious person—*Dennis Anderson*. Compounding these initial deprivations, they and their attorney, Hart, entered suit to enforce, claiming under (a) the claim of, (b) the lien of, and (c) the pretended right of that not-in-life persoa—*Dennis Anderson*—on behalf of Hart's client Phillips.

2. Prior to attorney Hart filing the suit to enforce, Petitioner Breedlove had written to Hart twice, informing Hart of the false, fraudulent, forged, perjured nature of these liens. Despite this information, attorney Hart caused additional mechanics' liens to be filed maliciously, changing the claimant name to Phillips, while still claiming under the *Dennis Anderson* lien and employing the initial false, fraudulent, forged, perjured *Dennis Anderson* lien as true. When attorney Hart maliciously entered suit to enforce, on behalf of his client Phillips, he employed as true the initial false, fraudulent, forged, perjured lien and a subsequent false, fraudulent, perjured lien in Arlington County, Virginia, and, furthermore, represented these liens as true to the court by *affidavit* of Phillips' sister, Joyce E. Horton, as agent for Phillips, thus perpetrating fraud on the court and fraud on a third person: Petitioner Breedlove.

3. To seek redress for damages attributable to these false, fraudulent, forged, perjured mechanics' liens, the Petitioner first brought suit in the Circuit Court of Fairfax County, Virginia, in 12 counts sounding in common-law defamation, statutory defamation, and conspiracy. Ten defamation counts of this suit were dismissed on demurrer, under the *Donohoe* rule that a mechanics' lien is a judicial action and, as such, not subject to suit for defamation.[2] Subsequently, the Petitioner nonsuited voluntarily the two conspiracy counts, after he filed suit in Arlington County.

4. After the dismissal of the 10 defamation counts in Fairfax, the Petitioner next brought suit in the Circuit Court of Arlington County, Virginia, in five counts sounding in malicious prosecution (malicious use of civil process), abuse of process, and conspiracy. This suit ultimately was dismissed by the Arlington trial judge as to all counts and as to all defendants on third demurrer, with 34 motions and pleadings unheard and unruled upon, and with no dispositive orders entered for any of those 34 pleadings.

5. On June 23, 1994, while the five-count suit in Arlington was still pending, but was to be dismissed pending hearing on a motion to rehear, Complainant filed *Ex Parte* BREEDLOVE, the

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[2] *Donohoe Constr. Co. v. Mount Vernon Assoc.*, 235 Va. 531, 369 S.E.2d 857 (1988).

instant *ex parte* action, in the U.S. District Court for the Eastern District of Virginia, Alexandria Division.[3]

6. a. The Virginia mechanics' lien law does not provide minimal predeprivation safeguards—notice and opportunity to be heard—prior to a mechanics' lien attaching. Furthermore, the Virginia mechanics' lien law does not provide for the posting of a lienor bond as a predeprivation safeguard. There are no postdeprivational remedies for redress of damages attributable to erroneous or false or malicious mechanics' liens prescribed by Virginia statute and no entitlements to such redress created by Virginia case law.

b. In addition to there being no predeprivation safeguards under the Virginia mechanics' lien law, there are no prescribed *entitlements* (either in Virginia statutory law or case law) to postdeprivational routes of redress for damages attributable to mechanics' liens. Virginia's postdeprivational remedies for redress of damages caused by erroneous, or false, or malicious mechanics' liens are inadequate to the point of nonexistence and do not satisfy the constitutional strictures of due process under *Connecticut v. Doehr, supra.*

c. Moreover, the refusal and dismissal of the appeals of the two *ex relatu* cases, and the failure of the U.S. Supreme Court to grant *certiorari* in those two *ex relatu* cases, creates the holding that, in Virginia, damages attributable to false, fraudulent, forged, perjured, mechanics' liens may not be redressed through causes of action for common-law defamation, statutory defamation, slander of title, malicious prosecution, abuse of process, or civil conspiracy.

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[3] Petitioner Breedlove, as complainant, (a) sought declaration under 28 USC §2201 of the constitutionality of the Virginia mechanics' lien law, *on its face*, based upon the holding of *Connecticut v. Doehr, supra*, that state laws which create liens are subject to the strictures of due process; (b) sought declaration of the constitutionality of certain Virginia judicial procedures and customs, including: (1) the Virginia judicial procedure for seeking redress for damages attributable to Virginia mechanics' liens, as that procedure is set forth in *Donohoe Constr. Corp. v. Mount Vernon Assoc., supra*; and (2) the Virginia interpretation of the English rule as that rule is set forth in *Ayyildiz, M.D. v. Kidd, supra;* (c) requested the application in his cause of the updated, *Doehr*-version of the three-part *Mathews* test [*Mathews v. Eldridge*, 424 U.S. 319, 47 L.Ed.2d 18, 96 S.Ct. 893 (1976)] set forth for use in private-party-initiated deprivations; and (d) sought injunctive relief under 42 USC §1983 against enforcement of such Virginia mechanics' lien statutes and associated Virginia judicial customs as the court might declare unconstitutional and requested in the *Complaint* a three-judge court, pursuant to 28 USC §2284.

d. The Virginia mechanics' lien law does not provide to the lienee either notice or opportunity to be heard before the lien attaches and Virginia postdeprivational remedies are inadequate on their face and have proven inadequate in their application, as demonstrated by the dismissals of Petitioner's two suits for redress by the Virginia circuit courts for the counties of Fairfax and Arlington, Virginia, and the refusal to hear or dismissal by the Virginia Supreme Court of the appeals of the two *ex relatu* cases.

e. Petitioner, as complainant in the instant *ex parte* action, sought federal *ex parte* declaration of the constitutionality of certain Virginia judicial procedures, including: (1) the Virginia judicial procedure for seeking redress for damages attributable to Virginia mechanics' liens, as that procedure is set forth in *Donohoe Constr. Corp. v. Mount Vernon Assoc., supra*; and (2) the Virginia interpretation of the English rule as that rule is set forth in *Ayyildiz, M.D. v. Kidd, supra*. Petitioner had been subjected to the Virginia judicial procedure for seeking redress for damages attributable to Virginia mechanics' liens in the *ex relatu* suits in the two circuit courts of Fairfax and Arlington, Virginia, and to the Virginia interpretation in the Arlington suit, based on judicial custom and not upon Virginia statute and, therefore, peculiar to Virginia as a sovereign state.

7. a. The federal district court for the Eastern District of Virginia (the trial court) had *in personam* jurisdiction as to the Petitioner and as to the State of Virginia prior to the *dismissal order* of November 18, 1994. The trial judge dismissed not on a fair and substantive basis, but in a bait-and-switch maneuver, after issuing a show-cause order for Petitioner to show cause why the instant action should not be dismissed for failure to serve the defendants.[4] Petitioner showed good and sufficient

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[4] It is important to understand the interrelationships among: (1) the federal district court's repeated references to "the defendants," and the purported need to serve them in the instant *ex parte* action; (2) the false captioning of the instant action, by administrative tampering, as a *bi partes* suit, with defendants varying over time; (3) the trial judge's bait-and-switch maneuver with the show-cause order; (4) the wrongful miscaption of the instant *ex parte* action as a *bi partes* suit in the civil docket summary and transmittal forms (which wrongful captioning the federal district court concealed from the Petitioner); and (5) the Fourth Circuit court's misrepresentation of the basis for the lower court's dismissal.

At the outset of the federal district court's dismissal scheme, Senior Assistant Attorney General Lucyk of Virginia and the Senior District trial judge both referred to the instant *ex parte* action wrongfully as a *bi partes* suit—"Breedlove v. Hart, et al.,"—in letters which they exchanged, which are in the record. Petitioner asserts that one or more persons had made known to

these officials the fact that *ex relatu* defendant Phillips: (1) maintained a highly-secret address of his usual place of abode; (2) had used a private postal box for his previous court correspondence in the *ex relatu* cases; (3) had left no forwarding address after the private-postal-box service he used went out of business, in the month prior to the filing of the instant action; and (3) as a paroled bank-fraud prisoner subject to Virginia parole authorities, was protected by the Privacy Act from the authorities' disclosure of his abode address to the Petitioner. Hence, it would be virtually impossible to obtain personal service upon *ex relatu* defendant Phillips, although Phillips was a known resident of Virginia. Service through the Secretary of the Commonwealth of Virginia would require a good postal address for the Secretary to mail the summons and copy of the complaint, from which the Secretary's service would not be returned.

The civil docket sheet for the instant action was tampered administratively to create the false appearance of a *bi partes* suit which, if true, would necessitate serving the named defendants—including *ex relatu* defendant Phillips. The federal district trial judge then issued a series of orders, captioning those orders wrongfully as "Breedlove v. Phillips, et al.," even though the docket schedule sheets prepared by the Clerk's office for each hearing captioned the instant action wrongfully as "Breedlove v. Hart, et al." Hart, an attorney in practice in Fairfax, Virginia, was easily servable at his usual place of business.

After the Senior District trial judge: (1) issued a series of wrongfully miscaptioned orders, (2) refused to determine any necessary service and denied Petitioner's motion for such determination, (3) failed to declare or to join any necessary defendants pursuant to Fed. R. Civ. P. 19, and (4) allowed more than 120 days to pass, the Senior District trial judge issued a show-cause order for Petitioner to show cause why the instant action should not be dismissed for Petitioner's failure to serve the purported defendants. Petitioner's memorandum of law, dated October 26, 1995, showed good and sufficient cause why he had no requirement to serve any defendants in an *ex parte* action, with in-depth support of legal authority, including *Ex Parte* PORESKY, 290 U.S 30, 78 L.Ed 152, — S.Ct — (1933) and *United States v. Merriwether*, 486 F.2d 498, at 505-506 (C.A. 5, 1973). The Senior District trial judge then executed his bait-and-switch maneuver and dismissed for Petitioner's purported failure "to properly serve the representatives of Virginia," which potential dismissal rationale the trial judge had omitted from his show-cause order.

Upon appeal, one or more persons at the federal district court tampered the record on appeal to create the false appearance of a *bi partes* suit and concealed from Petitioner the tampered civil docket summary and the wrongful caption nomenclature on the transmittal forms. Suspecting a procedural trap because of a similar trick being tried previously by the court against Petitioner in another case, Petitioner notified the *ex relatu* defendants of the pendency of the appeal with copies of his *Brief for the Appellant*.

Both Petitioner and the Clerk of the Fourth Circuit notified the Attorney General of Virginia of the appeal of the instant action. Senior Assistant Attorney General Lucyk filed a response constituting entry of voluntary general appearance on behalf of Virginia. At that point, the Fourth Circuit could not dismiss for Petitioner's purported failure "to properly serve the representatives of Virginia," when Virginia had been notified and had made voluntary general appearance.

With the benefit of the tampered, falsified, but *uncertified* federal district court record on appeal showing the wrongful appearance of the appeal of a *bi partes* suit, which record the Fourth Circuit had failed and refused upon Petitioner's two motions to effect correction of or to have the record certified, the way was paved for the Fourth Circuit: (1) to misrepresent the lower court's dismissal rationale as being for failure to serve the defendants—which wrongful mischaracterization the Fourth Circuit recited in its *opinion*, even to the recitation of authority of *nonexistent* Fed. R. Civ. P. 4 (m)—and (2) to

cause, in that there were no defendants in the instant *ex parte* action.

b. The trial judge then executed the switch portion of the bait-and-switch maneuver and dismissed for the Petitioner's purported failure "to properly serve the representatives of the State of Virginia" in an *ex parte* action, under the purported authority of *nonexistent* Fed. R. Civ. P. 4 (m), when the court failed *sua sponte* and refused on Petitioner's motion to discharge the court's duties to certify the constitutional challenge contained in the *Complaint*, and to notify the Attorney General of Virginia, pursuant to 28 USC §2403 (b).

c. The federal district court renounced its jurisdiction improperly on November 18, 1994.[5]

d. By the dismissal, *itself*, the federal district court denied Petitioner of both his federal and Virginia procedural due process and deprived Petitioner of his federal constitutional and federal civil rights.

9. a. Upon appeal of the federal district court's dismissal decision, the Fourth Circuit court of appeals had *in personam* jurisdiction as to the Petitioner, and as to the State of Virginia.[6]

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affirm that wrongfully-misrepresented dismissal rationale. This the Fourth Circuit court did.

[5] The federal district court renounced its jurisdiction: (1) without rendering constitutionally-required decisions on claims of violation of federal civil rights and claims of unconstitutionality of Virginia statutes; (2) without making the determinations required by *Coleman v. Thompson, supra*; (3) without discharging its mandatory 28 USC §2403 (b) duty to certify the challange to the constitutionality of one or more of Virginia's statutes and to notify the Attorney General of Virginia; (4) without procedural due process, after executing a bait-and-switch maneuver by the trial judge issuing a show-cause order why Petitioner's action should not be dismissed for Petitioner's purported failure to serve "the defendants," and then dismissing the instant action for Petitioner's purported "failure to properly serve the representatives of the State of Virginia," when no representatives of Virginia were defendants and when such potential basis of dismissal was not mentioned in the show-cause order; (4) without rendering an opinion on the constitutionality of the Virginia mechanics' lien law, challenged in the instant action as being unconstitutional; and (5) without declaring any defendants and without judicially joining any defendants, pursuant to Fed. R. Civ. P. 19. The trial judge's denial of the Petitioner's motion to determine any service requirements permits the inference that there were no defendants and no service requirements.

[6] Notice jurisdiction of the court was supplied: (1) by Petitioner's notice of February 21, 1995, to the Attorney General of Virginia, comporting with due process and comporting with 28 USC §2403 (b); (2) by the letter notification to the Attorney General of Virginia, dated February 28, 1995, by the Clerk of the Fourth Circuit, pursuant to 28 USC §2403 (b), which letter enclosed a

b. The Fourth Circuit court of appeals renounced its jurisdiction improperly on June 19, 1995.[7]

c. By the dismissal, itself, the Fourth Circuit court of appeals denied Petitioner of both his federal and Virginia procedural due process and deprived Petitioner of his federal constitutional and federal civil rights.

10. In its *opinion* of June 19, 1995, the Fourth Circuit court of appeals affirmed the lower court's dismissal, including the lower court's citation as authority of ***nonexistent,*** Fed. R. Civ. P. 4 (m).[8] The Fourth Circuit court misrepresented the lower court's dismissal rationale, and stated in the June 19th *opinion* that the lower court dismissed "for failure to serve Defendants within 120 days after commencing his action," whereas the lower, federal district court's *dismissal order* of November 18, 1994, states, for "the failure to properly serve the representatives of the State of Virginia." The Fourth Circuit court, itself, dismissed under the purported authority of the cited, but *nonexistent* Fed. R. Civ. P. 4 (m).[9]

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copy of the Petitioner's *Brief for the Appellant*; and (3) by the entry of voluntary general appearance by a senior assistant attorney general for Virginia by a filing on March 14, 1995, on behalf of Virginia, in response to the Petitioner's notification—prior to the dismissal of the appeal in the *opinion* of June 19, 1995, which dismissed not on a fair and substantive basis.

[7] The Fourth Circuit court renounced its jurisdiction: (1) without rendering constitutionally-required decisions on claims of violation of federal civil rights and claims of unconstitutionality of Virginia statutes; (2) without making the determinations required by *Coleman v. Thompson, supra*; (3) after failing *sua sponte* and refusing on motion to discharge the court's mandatory, jurisdictional duties under 28 USC §2403 (b) to certify the constitutional challenge; (4) without deciding all motions in the case; and (5) without rendering an opinion on the constitutionality of the Virginia mechanics' lien law, challenged in the instant action and pleaded as being unconstitutional in the *Brief for the Appellant*, dated February 21, 1995, "Statement of Facts," "B. The relief sought," at page 15; "F. Basis of the Appeal to the Fourth Circuit Couurt of Appeals," paragraph F. 10. d and F. 10. e, at page 21, and "Conclusion," in the prayer, at pages 49-50, thereof.

[8] a. On its face, the June 19, 1995, *opinion* of the Fourth Circuit court of appeals fails to rule upon or to enter dispositive *order* concerning Petitioner's request for summary judgment, made to the federal district court in Petitioner's motion for summary judgment of October 26, 1994, with Petitioner's *affidavit* of September 16, 1994, verifying the facts of the *Complaint* in its entirety, which request for summary judgment the federal district court had failed to rule upon or enter dispositive order concerning the request for summary judgment.

b. On its face, the June 19, 1995, *opinion* of the Fourth Circuit court of appeals fails to set forth the discharge by the Fourth Circuit court of its mandatory, jurisdictional duty to certify the constitutional challenge to the Virginia mechanics' lien law in the instant action, as mandated by 28 USC §2403 (b).

[9] The district court's November 18, 1994, *dismissal order* states, as follows:

11. The lower federal district court's November 18, 1994, *dismissal order* and the June 19, 1995, *opinion* of the Fourth Circuit court of appeals ignored material facts which conferred notice jurisdiction over the State of Virginia upon both the federal district court and upon the Fourth Circuit court.[10]

12. On March 14, 1995, Mr. Gregory E. Lucyk, Senior Assistant Attorney General for Virginia, filed a response on behalf of Virginia, constituting a voluntary general appearance for Virginia, acknowledging receipt of the Clerk's February 28, 1995, letter and copy of the Petitioner's *Brief for the Appellant*, stating Virginia's opposition to the instant action and disputing that the action raises any valid constitutional claim.

"ORDERED that:

" 1. This action is dismissed without prejudice pursuant to Fed. R. Civ. P. 4 (m). The court finds that plaintiff has not shown cause to excuse the failure to properly serve the representatives of the State of Virginia. Rather than explain the failure to serve the defendants, plaintiff persists in his position that this is an ex parte proceeding by which plaintiff means he need not serve any representatives of the State of Virginia and that the court should on his unopposed motion declare certain Virginia acts unconstitutional." [November 18, 1994, *dismissal order*, pp. 1-2. See copy of *dismissal order* as Appendix Exhibit 23, at pages A45 - A46, hereto.]

[10] The material facts conferring notice jurisdiction over the State of Virginia upon both district and appeals courts include: (a) that Petitioner, as *ex parte* complainant, notified the Attorney General of Virginia and the Governor of Virginia of the filing of his June 23, 1994, *Complaint*, by a copy of the *Complaint* sent by first-class, certified mail, postage prepaid, separately to both officials, notifying the representatives of Virginia in a manner comporting with Constitutional Due Process and comporting with 28 USC §2403 (b); (b) that the federal district court failed *sua sponte* to discharge the mandatory, statutory judicial duties under 28 USC §2403 (b) to certify the challenge to the constitutionality of one or more Virginia statutes and to notify the Attorney General of Virginia; (c) that the Petitioner, as *ex parte* appellant, had previously notified the Attorney General of Virginia of the filing of Petitioner's February 21, 1995, appeal in the instant action: (1) by a copy of the *Brief for the Appellant*, and (2) by a copy of the March 28, 1995, *Reply Brief for the Appellant*—each sent by first-class, certified mail, postage prepaid to the Attorney General of Virginia—and further by Petitioner sending copies of all motions and pleadings in the instant appeal to the Attorney General of Virginia; (d) that the Petitioner's, as appellant's, notice to the Attorney General of Virginia comports with Constitutional due process and comports with 28 USC §2403 (b) notification; (e) that the Clerk of the Fourth Circuit court of appeals notified the Attorney General of Virginia of the pendency of the instant appeal containing a challenge to the constitutionality of one or more Virginia statutes, by letter dated February 28, 1995, enclosing a copy of the Petitioner's *Brief for the Appellant*, in a manner comporting with Constitutional due process and comporting with the requirement of 28 USC §2403 (b) to notify the state attorney general; (f) that in response to the February 28, 1995, letter, a senior assistant attorney general for Virginia entered voluntary general appearance on behalf of Virginia on March 14, 1995 (see paragraph 12 above for details); and (g) that Petitioner was entitled to summary judgment on his June 23, 1994, *Complaint*, as verified by Petitioner's *affidavit*.

13. On March 28, 1995, Petitioner filed his *Reply Brief for the Appellant*, in response to Virginia's March 14, 1995, filing.[11]

14. In its *opinion* of June 19, 1995, the Fourth Circuit court of appeals affirmed the lower court's dismissal, without hearing the merits of the constitutional questions raised in the appeal; let stand the federal district court's dismissal decision; and, in footnote to the *opinion*, denied five of Petitioner's motions.[12]

15. On July 1, 1995, Petitioner filed his *Petition for Rehearing*, with copies to underlying *ex relatu* defendants, by their counsel of record, and to the Attorney General of Virginia, citing 28 USC §2403 (b), and certifying such in the certificate of service bound into each volume, at page 12 (the last page) of the *Petition*.

a. The *Petition for Rehearing* alleged nine new allegations which invoke the holding of the U.S. Supreme Court, in *Coleman v. Thompson*, *supra*, that the Fourth Circuit make determinations that the dismissal decision, itself, does not abridge any constitutional rights.

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[11] In the *Reply Brief for the Appellant*, Petitioner pleaded: (a) a pattern of judicial conduct demonstrating a conspiracy to maintain enforceability of unconstitutional Virginia law and to evade federal constitutional review, resulting in denial of procedural due process to the Petitioner, as complainant, and converted into denial of Petitioner's, as appellant's, federal constitutional and federal civil rights, with three detailed patterns of conduct—by the Virginia Supreme Court (spanning 1992 – 1995), by the Virginia Attorney General's office, and by the federal district court—set forth in demonstration of the conspiracy; together with (b) Petitioner's entitlement to *de novo* hearing at the Fourth Circuit; (c) Petitioner's entitlement to *ex parte* hearing at the Fourth Circuit; and (d) a request and prayer for any remand to be to a federal district court outside Virginia, because Petitioner pleaded he could not receive a fair trial on his claims in Virginia, due to previously-demonstrated bias against him by uncustomary and unconstitutional action by three of the five district judges (including the Senior District Judge) for the Eastern District of Virginia, Alexandria Division.

[12] The five motions denied by the Fourth Circuit in its June 19, 1995, *opinion* are: (1) *Appellant's Motion For Court Certification To Attorney General of Virginia, Pursuant to 28 USC §2403 (b), of Constitutional Challenge to Virginia's Mechanics' Lien Law*, dated February 21, 1995; (2) *Motion for Written, Published, Self-contained Memorandum Opinion of the Court's Findings, Rulings, and Decision in Its Disposition of the Instant Action*, dated March 3, 1995; (3) *Appellant's Motion To Sever Noticed, Ex Relatu Defendants, Who Were Not Named or Declared or Joined Defendants*, dated March 14, 1995; (4) *Appellant's Motion To Vacate the March 21, 1995, Order*, dated March 31, 1995; and (5) *Appellant's Motion Under F.R.E. 902 to Admissibility of District Court's Docket Summary into Evidence and For the Clerk of the Fourth Circuit Court of Appeals To Effect Correction of the Unattested, Tampered District Court Record (Lacking the Attestation of the Federal District Court's Clerk)*, dated May 4, 1995.

b. The *Petition for Rehearing* set forth three major and four lesser arguments and allegations of prejudicial error, denial of procedural due process, and denial of equal protection under law.[13]

c. The *Petition for Rehearing* alleges criminal activity by federal court employees and cover-up of criminal activity by federal court employees, in regard to the processing of Petitioner's action.

d. The Petitioner set forth good and sufficient reasons for the rehearing, which the Fourth Circuit court of appeals ignored.

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[13] The three major and four lesser arguments and allegations in the *Petition for Rehearing* include:

(1) The Fourth Circuit court of appeals committed prejudicial error, denied procedural due process, and denied equal protection under law (a) by violating the U.S. Supreme Court's holding in *Coleman v. Thompson*, *supra*, by violating the Virginia Supreme Court's holding in *Tharp v. Commonwealth*, 211 Va. 1, 3, — S.E.2d — (1970), by failing to make a determination that dismissing the instant appeal, in and of itself, would not abridge any constitutional rights.

(2) The Fourth Circuit court of appeals committed prejudicial, reversible error, denied procedural due process, and denied equal protection under law by violating the holding of the U.S. Supreme Court in *Ward v. Board of County Comm'rs*, 253 U.S. 17, 23, 64 L.Ed 751, 40 S.Ct 419 (1920), by disregarding the Court's duty (neglecting or renouncing a jurisdiction conferred by law), after the Fourth Circuit court of appeals possessed *in personam* jurisdiction as to all parties.

(3) The Fourth Circuit court of appeals committed prejudicial, reversible error, denied procedural due process, and denied equal protection under law by overlooking both material fact and law in its decision.

(a) The June 19, 1995, *opinion* contains wrongful variance, misrepresenting in its *opinion* the lower court's dismissal rationale as being "for failure to serve defendants," when the lower court order dismissed for "the failure to properly serve the representatives of the State of Virginia," in an *ex parte* action, after the lower court failed to comply with 28 USC §2403 (b) notification, and after Virginia entered voluntary general appearance.

(b) The June 19, 1995, *opinion* in the instant *ex parte* action is wrongfully captioned, "Kendall H. Breedlove v. James R. Hart; Calvin W. Phillips," based upon the wrongful, tampered caption of the false, fraudulent, tampered, *uncertified* federal district court record.

(c) The June 19, 1995, *opinion* is based upon the Fourth Circuit's review of and reliance upon the false, fraudulent, tampered, incomplete, uncertified record from the federal district court.

(d) The June 19, 1995, *opinion*, based as it is upon review of and reliance upon the false, fraudulent, tampered, incomplete, uncertified record from the federal district court, perpetrates fraud on the Petitioner, as appellant and, the Fourth Circuit court having refused to effect correction of the uncertified federal district court record (for details, see paragraphs 16 a and b, above), will perpetrate fraud upon the U.S. Supreme Court and upon the Petitioner, as petitioner for *certiorari*.

Those reasons are summarized in the Petitioner's quote, in footnote below, from the *Petition for Rehearing*.[14]

16. 2. On July 10, 1995, Petitioner filed *Appellant's Motion (a) For Writ of Certiorari to Federal District Court for Complete Record; and (b) For the Clerk of the Fourth Circuit Court of Appeals to Effect Correction of the Unattested, Tampered District Court Record (Lacking the 28 USC §1738 Authentication of the Clerk of the Federal District Court); Prior to Review of Petition for Rehearing and Prior to U.S. Supreme Court Review*, dated July 10, 1995, which alleges, in part, that one or more persons suborned the Clerk of the federal district court to commit perjury in two counts: to swear falsely to the verity of false, fraudulent, tampered, incomplete, uncertified district court records in two of Petitioner's *ex parte* actions.[15]

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[14] " 1. In the Petitioner's judgment, (a) the dismissal decision, *itself*, denies Petitioner's constitutional rights and, therefore, contravenes the holding of the Supreme Court in *Coleman v. Thompson*, 501 U.S. —, 115 L.Ed.2d 640, 111 S.Ct — (1991), by the Fourth Circuit court of appeals' failure to make the required determinations that the dismissal decision, *itself*, does not abridge constitutional rights; and (b) the Fourth Circuit court of appeals has overlooked both material fact and law in its decision, in that its June 19, 1995, *opinion*: (1) is at variance with the federal district court's November 18, 1994, dismissal order, (2) is based specifically on the tampered portions of the false, fraudulent, tampered, incomplete, uncertified federal district court record, and (3) perpetrates a fraud upon the Petitioner and, if uncorrected, will pertetrate fraud upon the U.S. Supreme Court and upon the Petitioner." [*Petition for Rehearing*, dated July 1, 1995, "Introduction," paragraph 1, at page 1.]

[15] " 15. Appellant alleges that one or more persons suborned a federal employee, Doris R. Casey, the Clerk of the Court for the federal district court for the Eastern District of Virginia, Alexandria Division, to commit perjury in two counts: (a) by suborning her to swear falsely to the verity of the false, fraudulent, tampered, incomplete, uncertified federal district court record in the instant action and (b) by suborning her to swear falsely to the verity of the false, fraudulent, tampered, incomplete, uncertified federal district court record in another of Appellant's appeals.[Note 7] Appellant alleges that Doris R. Casey, the Clerk of the Court, had the integrity not to commit two counts of perjury and either resigned under pressure or was forced to leave, in retribution for failing to certify the two false, fraudulent, tampered, incomplete, uncertified federal district court records in the Appellant's two appeals and, thus, for failing to commit two counts of perjury. The last day worked for Doris R. Casey, the Clerk of the Court, was June 2, 1995. Appellant alleges that Ms. Casey, the Clerk of the Court, may have been allowed to resign under some pretext which would allow Ms. Casey to continue to keep certain benefits and/or entitlements (such as medical, pension, or retirement benefits) as the price of her silence in regard to these matters." [*July 10, 1995, motion, paragraph 15, at page 15.*]

Note 7 in motion paragraph 15, quoted above, states: "In the appeal of *Ex Parte Breedlove, ex rel. Tysons Manor Homeowners Association v. Breedlove, ex rel. Sky Bryce Association Inc. v. Breedlove* (E.D. Va., file no. CA-94-639, C.A.4 docket no. 95-1737)."

b. The Fourth Circuit court of appeals denied the July 10, 1995, motion for *certiorari* to the federal district court in *order* of August 23, 1995. There is no evidence available to the Petitioner that the Fourth Circuit court of appeals instituted any investigation into the criminal charges—concerning criminal activities affecting the verity and reliability of the federal district court records under review— after those charges were brought to the judicial attention of the Fourth Circuit court. No *writ of certiorari* was ever issued to the federal district court.

c. No correction of the federal district court record was ever made and falsifications in the federal district court record have been perpetuated in the civil docket summary of the Fourth Circuit court. Petitioner wrote to the Clerk for the Fourth Circuit on March 31, 1995, requesting copies of any certification form annexed to the federal district court record in the instant action, which authenticates the federal district court record in accordance with 28 USC §1738, or F.R.E. 901, or F.R.E. 902, and has never received a copy of any such certification form from the Clerk of the Fourth Circuit.

d. In addition, one or more persons at the Fourth Circuit court: (1) has perpetuated the lower court's falsifications and tampered entries into the Fourth Circuit's civil docket summary; and (2) have introduced new falsifications and tamperings of the Fourth Circuit's civil docket summary, to create anew the false appearance of the appeal of a *bi partes* suit, and to lend support to the wrongful dismissal in the June 19, 1995, *opinion*, for purported failure to serve the defendants.

17. On August 10, 1995, the Fourth Circuit court of appeals issued *order* denying the *Petition for Rehearing*, and Petitioner's request for rehearing *en banc*, and stated that, as no member of the Court or the panel requested a poll on the suggestion for rehearing *en banc*, the panel considered the *petition* and denied it. In view of the Petitioner's allegations concerning criminal activity, associated with the employees of a subordinate district court, contained in the *Petition for Rehearing*, it is peculiar indeed that, in the words of the August 10, 1995, *order*: "no member of the Court or the panel requested a poll on the suggestion for rehearing *en banc*." On its face, the August 10, 1995, *order:* (a) fails to rule on or to enter dispositive *order* for Petitioner's July 10, 1995, motion concerning obtaining accurate, true, complete lower court records, prior to the rehearing; and (b) fails to contain the determinations required by *Coleman v. Thompson, supra.*

18. On August 18, 1995 the Fourth Circuit court of appeals issued its *mandate*—that the June 19, 1995, judgment of the court takes effect that day. (For details, see copy of the August 18, 1995, *mandate* as Appendix Exhibit 5, at page A9.) On its face, the August 18, 1995, *mandate:* (a) fails to rule on or to enter dispositive order for Petitioner's July 10, 1995, motion, and (b) fails to contain the determinations required by *Coleman v. Thompson, supra.*

19. On August 18, 1995, also, the Petitioner filed timely, with the Fourth Circuit court of appeals, Petitioner's *notice of appeal* to the U.S. Supreme Court, seeking review of the June 19, 1995, *opinion* and August 10, 1995, *order* denying rehearing, of the Fourth Circuit court and, therein, requesting the Fourth Circuit court to stay any *mandate* pending review by the U.S. Supreme Court in the instant action. In the *notice of appeal*, Petitioner noted that the Fourth Circuit court of appeals had failed to resolve Petitioner's July 10, 1995, motion. (For details, see copy of August 18, 1995, *notice of appeal* as Appendix Exhibit 4, at pages A6 - A8.)

20. On August 23, 1995, the Fourth Circuit court of appeals issued *order* denying Petitioner's July 10, 1995, motion, and thereby refused to effect correction of the false, tampered, *uncertified* federal district court record on appeal. On its face, the August 23, 1995, *order* fails to contain the determinations required by *Coleman v. Thompson, supra.*

21. On September 22, 1995, the Fourth Circuit court of appeals issued *order*, that Petitioner's request for stay of mandate—treated by the Fourth Circuit court of appeals as a motion to recall the mandate—was denied. On its face, the September 22, 1995, *order* fails to contain the determinations required by *Coleman v. Thompson, supra.*

22. The denials of federal procedural due process and deprivation of Petitioner's federal constitutional rights and federal civil rights by the federal district court for the Eastern District of Virginia, Alexandria Division, are demonstrated by the course of proceedings set forth in Appendix Exhibit 13, in "Detailed course of proceedings in the instant *ex parte* action," at pages A23-A34.

REASONS FOR GRANTING THE WRIT

I. *The Fourth Circuit court of appeals: (1) deprived the Petitioner of his federal constitutional rights of equal protection*

***under law and of due process; (2) deprived the Petitioner of his federal civil rights under 28 USC §1291, 28 USC §2403 (b), 28 USC §2284, and under 28 USC §1738, F.R.E. 901 and F.R.E. 902, taken together; (3) violated the U.S. Supreme Court's holdings in* Coleman v. Thompson, *and* Ward v. Board of County Comm'rs*; and (4) denied the Petitioner procedural due process (dismissing under* nonexistent *Fed. R. Civ. P. 4 (m) and refusing to effect correction of the false,* uncertified *record on appeal)—in that, the Fourth Circuit court committed wilful, overt acts against the Petitioner and against the Petitioner's causes of action, which overt acts constitute not only prejudicial, reversible error, but also demonstrate the court's bias against the Petitioner and the court's actual malice against the Petitioner and against the Petitioner's causes of action to have an* ex parte *determination of the constitutionality of the Virginia mechanics' lien law, as an entitlement under* Ex Parte PORESKY, supra.**

1. The Petitioner, as complainant and as appellant, was and is entitled to four types of entitlements, as set forth below in footnote.[16]

2. The Fourth Circuit court of appeals and the federal district trial court deprived the Petitioner of the cited federal constitutional rights and of the cited federal civil rights to which he was entitled, by committing wilful, overt acts against the Petitioner and against the Petitioner's causes of action, which overt acts were wrongful and unlawful.

3. The overt acts of the Fourth Circuit court of appeals and of the federal district court are pleaded as such in the text of the argument sections which follow.

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[16] The Petitioner is and was entitled to :

a. Equal protection under law, even though Petitioner is a member of a class of citizens who challenge the constitutionality of one or more Virginia statutes; and a member of a class of citizens who prosecute their causes of action in the courts *pro se*, without representation by counsel; and a member of a class of citizens who bring suit against a Virginia attorney, for third-party liability.

b. Constitutional due process, granted by the Fifth Amendment of the U.S. Constitution, in that the federal district trial court denied Petitioner opportunity to be heard before an *impartial* tribunal and in that the Fourth Circuit court denied Petitioner opportunity to be heard before an *impartial* tribunal;

c. Federal civil rights arising under: (1) 28 USC §1291, (2) 28 USC §2403(b), (3) 28 USC §2284, and (4) 28 USC §1738, F.R.E. 901 and F.R.E. 902, taken together; and

d. Right to procedural due process, in conjunction with the deprivations of federal civil rights under: (1) 28 USC §1291, (2) 28 USC §2403 (b), (3) 28 USC §2284, and (4) 28 USC §1738, F.R.E. 901 and F.R.E. 902, taken together, and the procedural requirements prescribed by those federal statutes and rules.

II. *The Fourth Circuit court of appeals committed prejudicial, reversible error, denied procedural due process, denied equal protection under law, and demonstrated bias and actual malice by violating repeatedly the U.S. Supreme Court's holding in* Coleman v. Thompson, supra, *in three respects.*

1. The Fourth Circuit court of appeals' dismissal, *itself*, abridged one or more of Petitioner's federal constitutional rights.[17]

2. The Fourth Circuit court of appeals failed *sua sponte* to make a determination, consistent with *Coleman v. Thompson, id.*, 115 L.Ed.2d, at 664, that the dismissal, *itself*, of the instant appeal would not abridge any constitutional rights.

3. The Fourth Circuit court of appeals failed to hear the Petitioner's action *de novo*, as is Petitioner's entitlement (as a matter of federal civil right) under 28 USC §1291, and as was petitioned for repeatedly,[18] but instead, only reviewed the lower federal district court's action.

4. The Fourth Circuit court's: (a) failure to consider properly the elements of a cause of action under 28 USC §2201 and (b) dismissal, not on a fair and substantive basis—precluded the Fourth Circuit court of appeals hearing the merits and rendering decisions on the constitutional questions presented.

5. The Fourth Circuit court of appeals' affirmance of the lower court's decision, without the Fourth Circuit court

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[17] The Fourth Circuit court's dismissal violated procedural due process and equal protection under law in three respects: (a) by failing to make a determination in the June 19, 1995, *opinion*, that the decision, *itself*, to affirm the district court's dismissal to the instant action and to dismiss the appeal, not on a fair and substantive basis, but on the unfair basis of an uncertified, tampered lower-court record, did not abridge any constitutional rights; (b) by failing to make a determination in the August 10, 1995, *order*, that the decision, *itself*, denying the *Petition for Rehearing* and letting stand the dismissal of the appeal, not on a fair and substantive basis, did not abridge any constitutional rights; (c) by failing in its review to assure that the federal district court made the determination in its November 18, 1994, *dismissal order*, that the dismissal decision, *itself*, not on a fair and substantive basis, did not abridge any constitutional rights; and (d) by failing and refusing to certify the constitutionality challenge to the Attorney General of Virginia, pursuant to 28 USC §2403 (b).

[18] Prayer for *de novo* hearing set forth in *Brief for the Appellant*, at page 49; in the *Reply Brief for the Appellant*, at page 24, and is stated as an entitlement in the *Petition for Rehearing*, at page 11.

addressing Petitioner's case *de novo*, resulted in a wrongful decision.[19]

6. These wilful actions and failures of the Fourth Circuit court of appeals, embodied in the June 19, 1995, *opinion* and August 10, 1995, *order* denying rehearing, denied Petitioner procedural due process and violated his federal constitutional rights and federal civil rights.

7. These wilful actions and failures of the Fourth Circuit court of appeals constitute overt actions which demonstrate not only prejudicial, reversible error, but also demonstrate the Fourth Circuit court's bias and actual malice against the Petitioner and against Petitioner's causes of action to challenge the constitutionality of the Virginia mechanics' lien law in *ex parte* action.

III. The Fourth Circuit court of appeals committed prejudicial, reversible error, denied procedural due process, denied equal protection under law, and demonstrated bias and actual malice by violating the holding of the U.S. Supreme Court in* Ward v. Board of County Comm'rs, supra, *by disregarding the Court's duty (neglecting or renouncing a jurisdiction conferred by law), after the Fourth Circuit court possessed* in personam *jurisdiction as to all parties, by general appearances and/or by notice comporting with due process and with 28 USC §2403 (b).

1. The U.S. Supreme Court has stated that the duty of courts: "cannot be disregarded without neglecting or renouncing a jurisdiction conferred by the law and designed to protect

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[19] The Fourth Circuit court's affirmance decision is wrongful because the decision: (a) upheld the lower court's ruling, misrepresented by the Fourth Circuit court as being that the Petitioner failed to serve the defendants (in an *ex parte* action) when, in fact, the lower court had dismissed for Petitioner's purported failure "to properly serve representatives of the State of Virginia:" (1) after the lower court refused to specify any necessary service requirements, denied the Petitioner's *pro se* motion requesting the court to specify any necessary service requirements and, thereby, contravened the admonition of the Fourth Circuit court to its subordinate courts—to assist a *pro se* litigant in bringing any necessary parties before the court—as set forth in *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir.), cert. den., 439 U.S. 970 (1978), and (b) upheld the lower court without any explanation of the Fourth Circuit court's misrepresentation of the purported failure of the Petitioner to serve the defendants in an *ex parte* action, or of the necessity to serve the representatives of the State of Virginia, in light of Virginia's voluntary general appearance in response to the notice provided by the Petitioner serving a copy of the *Complaint* upon the Governor of Virginia and upon the Attorney General of Virginia by first-class, certified mail, postage prepaid, concurrent with filing the *Complaint*, as notice comporting with 28 USC §2403 (b) and comporting with constitutional due process.

and maintain the supremacy of the constitution and the laws made in pursuance thereof. *Ward v. Board of County Comm'rs*, 253 US 17, 23, 64 L Ed 751, 40 S Ct 419 (1920). Indeed, the duty arose out of a distinct distrust of state courts, which the Court perceived as attempting to evade federal review."[20]

2. The U.S. Supreme Court has also stated: "Even though the constitutional protection invoked be denied on non-federal grounds, it is the province of this Court to inquire whether the decision of the state court rests upon a fair and substantial basis. If unsubstantial, constitutional obligations may not thus be evaded."[21]

3. By logical extension of these holdings, *federal* courts cannot evade their constitutional obligations, either.

4. The Fourth Circuit court of appeals possessed *in personam* jurisdiction as to all parties.[22]

5. Thus, having acquired jurisdiction in the instant appeal, the Fourth Circuit court improperly renounced its jurisdiction in the instant appeal, five months later, without hearing the merits of the federal constitutional questions in the appeal.

6. These wilful actions and failures of the Fourth Circuit court of appeals constitute overt actions which demonstrate not only prejudicial, reversible error, but also demonstrate the Fourth Circuit court's bias and actual malice against the Petitioner and against Petitioner's causes of action to challenge the constitutionality of the Virginia mechanics' lien law in *ex parte* action.

IV. The Fourth Circuit court of appeals committed prejudicial, reversible error, denied procedural due process, denied equal protection under law, and demonstrated bias and actual malice: (1) by affirming improperly the lower court's failure to discharge its jurisdictional 28 USC §2284 duties; (2) by

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[20] Cited by Justices Blackmun, Marshall, and Stevens, in their dissent to *Coleman v. Thompson, id.* 115 L.Ed.2d, at 676-77.

[21] *Broad River Power Co. v. South Carolina ex rel. Daniel*, 281 US 537, 540, 74 L Ed 1023, 50 S.Ct 401 (1930), cited by Justices Blackmun, Marshall, and Stevens, in their dissent to *Coleman v. Thompson, id.* 115 L.Ed.2d, at 677.

[22] Notice jurisdiction of the court was supplied: (a) by Petitioner's timely filing of the *Brief for the Appellant*; (b) by the Clerk of the Fourth Circuit court's February 28, 1995, letter, enclosing a copy of the *Brief for the Appellant*—citing therein that 28 USC §2403 (b) may be applicable—to the Attorney General of Virginia; and (c) by the entry of voluntary general appearance by a senior assistant attorney general for Virginia on March 14, 1995, on behalf of Virginia, in response to the Clerk's notification.

affirming improperly the lower court's failure to discharge its jurisdictional 28 USC §2403 (b) duties; (3) by itself failing, sua sponte, and by refusing (upon written motion) to discharge its own, jurisdictional, 28 USC §2403 (b) duties; and (4) by affirming the November 18, 1994,* dismissal order *of the lower court and by itself issuing the June 19, 1995,* opinion *and August 10, 1995,* order *denying rehearing, each of which three orders is void for lack of jurisdiction to dismiss.

1. Petitioner, as complainant and as appellant, was entitled (as a matter of federal civil right): (a) to the application of the mandatory judicial procedure set forth in 28 USC §2284, regarding a three-judge court; and (b) to the application of the mandatory judicial procedure, as set forth in 28 USC §2403 (b) for certification of the constitutional challenge and for notification of the Virginia Attorney General.[23]

2. The trial court and the Fourth Circuit court of appeals have deprived Petitioner wrongfully: (a) of his entitlement under 28 USC §2284, after Petitioner had requested a three-judge court formally in the June 23, 1994, *Complaint*; and (b) three times of his entitlement under 28 USC §2403 (b), after the courts had failed *sua sponte* and refused to discharge their mandatory duties under 28 USC §2403 (b).

3. Thus, the federal courts deprived the Petitioner wrongfully: (a) of his federal civil right under 28 USC §2284[24] and (b) three times of his federal civil right under 28 USC

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[23] The provisions of 28 USC §2403 (b) state, in part:"(b) **In any action**, suit, or proceeding in a court of the United States **to which a State or any agency, officer, or employee thereof is not a party**, wherein the constitutionality of any statute of that State affecting the public interest is drawn into question, **the court shall certify such fact to the attorney general of the State**, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. * * *" [*bold emphasis added by Petitioner to 28 USC §2403 (b).*]

[24] This deprivation of Petitioner's federal civil right under 28 USC §2284 occurred in two respects:

a. By dismissing the instant action, without the single, district trial judge having discharged the trial court's 28 USC §2284 duties pertaining to a three-judge court, when the Petitioner had requested a three-judge court in the *Complaint* and in Petitioner's two motions for the review of a single judge's action by a three-judge court.

b. By Fourth Circuit court, itself, failing to review the trial court's 28 USC §2284 duties during the review of the appeal, and letting stand the lower court's dismissal of the instant action by a single district judge, which action was pleaded as being a three-judge matter.

§2403 (b),[25] without Due Process—notice and an opportunity to be heard.

4. The trial court's November 18, 1994, *dismissal order* is void and the Fourth Circuit court of appeals' June 19, 1995, *opinion* and August 10, 1995, *order* are void.[26]

5. a. The Fourth Circuit court still had notice jurisdiction as to Virginia, despite the Fourth Circuit court's failure and refusal to discharge its own 28 USC §2403 (b) duties in the instant appeal.[27]

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[25] This deprivation of Petitioner's federal civil right under 28 USC §2403 (b) occurred in three respects:

a. By the trial court dismissing the instant action, without discharging the 28 USC §2403 (b) duties of a federal court when the pleadings of the June 23, 1994, *Complaint* make clear the applicability of 28 USC §2403 (b);

b. By the Fourth Circuit court, itself, failing to discharge its own 28 USC §2403 (b) duties, as a federal court, during the review of the appeal, and letting stand the lower court's dismissal of the instant action;

c. By the Fourth Circuit court, itself, failing to discharge its own 28 USC §2403 (b) duties, as a federal court, during the review of the *Petition for Rehearing*, and letting stand the dismissal of the instant appeal.

[26] a. Each of the three orders is void: (1) for lack of the trial court's and appeals court's jurisdiction to dismiss without discharging the mandatory, jurisdictional duties of a federal court under 28 USC §2403 (b); (2) for lack of the trial court's jurisdiction to dismiss a three-judge matter.—pleaded as a three-judge matter—by a single judge, without discharging the district court's mandatory, jurisdictional, 28 USC §2284 duties; and (3) for lack of the Fourth Circuit's jurisdiction to affirm a lower court's dismissal by a single judge of a three-judge matter, without any findings and determinations required to be made by the single district judge, under 28 USC §2284, to confer jurisdiction to dismiss upon a single judge.

b. For details demonstrating: (a) that the Fourth Circuit court's affirmance of the lower court's failure to discharge its jurisdictional 28 USC §2284 duties was improper, and (b) that the November 18, 1994, *dismissal order*, the June 19, 1995, *opinion*, and the August 10, 1995, *order* denying rehearing are void for lack of jurisdiction, **see** Appendix Exhibit 26, "Details of the Fourth Circuit Court's Improper Affirmance and Lack of Jurisdiction to Dismiss, re: 28 USC §2284 Duties," at pages A49-A54.

c. For details demonstrating: (a) that the Fourth Circuit court's affirmance of the lower court's failure to discharge its 28 USC §2403 (b) duties and failure to discharge its own 28 USC §2403 (b) duties was improper, and (b) that the November 18, 1994, *dismissal order*, the June 19, 1995, *opinion*, and the August 10, 1995, *order* denying rehearing are void for lack of jurisdiction, **see** Appendix Exhibit 28, "Details of the Fourth Circuit Court's Improper Affirmance and Lack of Jurisdiction to Dismiss, re: 28 USC §2403 (b)," at pages A56-A60.

[27] Notice jurisdiction of the court was supplied: (a) by notice comporting with due process: (1) because the Clerk of the Fourth Circuit notified the Attorney General of Virginia, by letter of February 28, 1995, pursuant to 28 USC §2403 (b), of the pending instant appeal and enclosing a copy of the *Brief for the Appellant*, (2) because Senior Assistant Attorney General Gregork E. Lucyk entered voluntary general appearance on behalf of Virginia by his timely response on March 14, 1995, referring therein to the Clerk's notification letter of February 28, 1995, and including statements opposing the Petitioner's

b. Thus, the Fourth Circuit court acquired *in personam* jurisdiction as to the parties, including Virginia, even though the court tried to evade obtaining that jurisdiction, and that jurisdiction once obtained could not properly be renounced without deciding the merits of the constitutional questions in the appeal.

6. These wilful actions and failures of the Fourth Circuit court of appeals constitute overt actions which demonstrate not only prejudicial, reversible error, but also demonstrate the Fourth Circuit court's bias and actual malice against the Petitioner and against Petitioner's causes of action to challenge the constitutionality of the Virginia mechanics' lien law.

V. The Fourth Circuit court of appeals committed prejudicial, reversible error, denied procedural due process, denied equal protection under law, and demonstrated bias and actual malice by affirming the lower court's dismissal of the instant ex parte action under the cited authority of* nonexistent *Fed. R. Civ. P. 4 (m), and by the Fourth Circuit court, itself, relying on the authority of cited, but* nonexistent *Fed. R. Civ. P. 4 (m).

1. The federal district trial court demonstrated evidence not only of prejudicial, reversible judicial error, but also of judicial bias and of actual judicial malice against Petitioner, as complainant, by the federal district court dismissing the instant action under the purported authority of a *nonexistent* rule of federal civil procedure—Fed. R. Civ. P. 4 (m)—after the senior district trial judge three times used the wrongful citation of the same, *nonexistent* Fed. R. Civ. P. 4 (m) in court orders, and after denying Petitioner's two motions and one memorandum of law—with attached copies of Fed. R. Civ. P. 4, in its entirety, showing no paragraph (m) within Rule 4, which contains only paragraphs (a) through (j)—bringing the fact of that purported rule's nonexistence to the judicial attention of the senior district trial judge.

2. The Fourth Circuit court of appeals demonstrated evidence not only of prejudicial, reversible judicial error, but also of judicial bias and of actual judicial malice against Petitioner, as

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appeal; and (3) because Petitioner, himself, notified the Attorney General of Virginia, pursuant to 28 USC §2403 (b), with a copy of the *Brief for the Appellant* (citing therein that 28 USC §2403 (b) may be applicable) at the initiation of the appeal in the instant action and furnished that official with a copy of the *Brief for the Appellant*, and subsequently with the *Reply Brief for the Appellant*, subsequent pleadings, and the *Petition for Rehearing*, each by first-class, certified mail, postage prepaid, in a manner comporting with 28 USC §2403 (b) and comporting with due process.

appellant, by the Fourth Circuit court affirming the lower court's dismissal under the purported authority of the the same, *nonexistent* rule of federal civil procedure—Fed. R. Civ. P. 4 (m)—after Petitioner, as appellant, pleaded the nonexistence of Fed. R. Civ. P. 4 (m) as part of the basis for reversing the lower court's dismissal.

3. Stated simply, the federal district court could find no valid, lawful way to dispose of the Petitioner's instant action, so the federal district trial judge determined, wilfully, to dismiss the instant action wrongfully.[28] Dismissal under purported authority of a nonexistent rule of federal civil procedure, after the nonexistence of the rule is called to the judicial notice of the court three times, is not judgmental error.

4. One or more persons at the federal district court wilfully tampered and falsified the record on appeal in the instant action to provide the surface appearance, but without any underlying judicial substance, of some basis upon which the Fourth Circuit court could dismiss the instant action without having to hear the merits.

5. The Fourth Circuit court of appeals could find no valid, lawful way to dispose of the Petitioner's instant action, so the

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[28] a. The federal district trial judge: (a) made up a nonexistent jurisdictional requirement—that of purported necessity to serve defendants in an *ex parte* action—and did so after denying Petitioner's motion to determine any service requirements and after failing *sua sponte* to declare any defendants or to join any defendants judicially, pursuant to Fed. R. Civ. P. 19; (b) made up a nonexistent failure of the Petitioner, as complainant—that of failing "to properly serve the representatives of the State of Virginia," (1) when Virginia was not a named, or declared, or judicially-joined defendant, (2) when the Petitioner had notified the Governor of Virginia and the Attorney General of Virginia upon the filing of the *Complaint*, and (3) when the federal district court had failed and refused its mandatory duty under 28 USC §2403 (b) to certify the constitutionality challenge and to notify the Attorney General of Virginia; (c) the trial court claimed falsely the purported authority to dismiss under *nonexistent* Fed. R. Civ. P. 4 (m); and (d) permitted a falsified, fraudulent, tampered, incomplete, *uncertified* record on appeal to be transmitted to the Fourth Circuit court and failed to take any steps to correct the record or to certify the record.

b. For details of the purported requirement to serve defendants in an *ex parte* action, see copies of the federal district court *orders* of September 7, 1994, September 16, 1994, and October 6, 1994, as Appendix Exhibits 16, 18, and 19, respectively, at pages A37, A39, and A41, respectively. For details of the trial judge's denial of Petitioner's motion to determine any service requirements, see copy of the federal district court order of September 7, 1994, as Appendix Exhibit 16, at page A37.

federal circuit judges determined, wilfully, to dismiss the instant action wrongfully.[29]

6. The Fourth Circuit dismissed the instant action for Petitioner's purported failure in the lower court to serve the *ex relatu* defendants in an *ex parte* action, without hearing the instant action *de novo*, when the Petitioner had noticed the *ex relatu* defendants, with copy of his *Brief for the Appellant*, in Petitioner's appeal before the Fourth Circuit court. Thus, if notice jurisdiction was required over the *ex relatu* defendants in an *ex parte* action, for *de novo* hearing, then the Fourth Circuit court had notice jurisdiction over the *ex relatu* defendants

7. One or more persons at the Fourth Circuit court wilfully tampered and falsified the Fourth Circuit's record of the appeal in the instant action to provide the surface appearance, but without any underlying judicial substance, of a *bi partes* appeal to lend support to the Fourth Circuit's wrongful dismissal.

8. The actions of: (a) the federal district court, in concert with (b) the actions of the Fourth Circuit court of appeals — are overt acts demonstrating the federal courts' bias and acutal malice against the Petitioner and against the Petitioner's causes of action to have an *ex parte* determination of the constitutionality of the Virginia mechanics' lien law, as an entitlement under *Ex Parte PORESKY, supra*.

VI. The Fourth Circuit court of appeals committed prejudicial, reversible error, denied procedural due process, denied equal protection under law, and demonstrated bias and actual malice by failing to effect correction of the false, fraudulent,

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[29] The federal **circuit** judges of the Fourth Circuit: (a) failed and refused to take any action to have the falsified, tampered, *uncertified* federal district court record corrected, which record falsely and wrongfully misrepresents the instant *ex parte* action as a *bi partes* suit along with other misrepresentations and concealments; (b) relied upon the false, fraudulent, tampered, incomplete, *uncertified* federal district court record knowingly; (c) denied Petitioner's two motions which sought correction and certification of the false, fraudulent, tampered, incomplete, *uncertified*, federal district court record on appeal; (d) transmuted the federal district court's stated, but wrongful, basis for dismissal—from failure "to properly serve the representatives of the State of Virginia,"—falsely and wrongfully into the stated, but wrongful, purported failure of Petitioner to serve the defendants in an *ex parte* action; (e) affirmed the lower court's dismissal on that wrongfully mischaracterized basis—under the purported authority of cited, but *nonexistent* Fed. R. Civ. P. 4 (m)—supported by the surface appearance of the federal district court's falsified, tampered, civil docket summary and the falsified, tampered civil docket summary of the Fourth Circuit court; (f) failed to take any action to have the falsified, tampered, Fourth Circuit court record maintained accurately and truly; and (g) failed to reach the merits *de novo*.

tampered, incomplete, uncertified federal district court record on appeal, which was and remains uncertified and which was admitted into evidence in violation of 28 USC §1738, or F.R.E. 901, or F.R.E. 902, and was relied upon knowingly by the Fourth Circuit court to the judicial detriment of the Petitioner.

1. The judicial actions in the *Breedlove* cases, challenging the constitutionality of one or more Virginia statutes and associated Virginia judicial procedures, have been subjected to a pattern of judicial conduct demonstrating the existence of a criminal conspiracy involving members of the Virginia state judiciary and federal judiciary sitting in Virginia to maintain the enforceability of Virginia laws without federal review as to their constitutionality.

2. The conspiracy—named by the Petitioner as the Cardinal Conspiracy[30]—is a combination of two or more persons for a common, unlawful purpose, to be achieved through means both lawful and unlawful, and implemented through one or more overt acts.

3. The purpose or objective of the Cardinal Conspiracy is to maintain the enforceability of unconstitutional Virginia laws and associated Virginia judicial procedures and customs and to evade constitutional review of those unconstitutional Virginia laws and procedures, by either Virginia state courts or federal courts.

4. The means employed by the Cardinal Conspiracy include means both lawful and unlawful.[31]

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[30] For Petitioner's own use, he refers to these matters as the *Cardinal Conspiracy* and its cover-up. The choice of the name "cardinal" for the conspiracy was based on the state bird of Virginia as a symbol for Virginia.

[31] The Cardinal Conspiracy has employed means including, among other means: (a) the Virginia Supreme Court refusing wrongfully to hear at least three appeals, including one of the *ex relatu* suits; (b) the Virginia Supreme Court dismissing a fourth appeal, the other *ex relatu* suit, not on a fair and substantive basis; (c) the condoning by Virginia state courts and by federal courts of fraud upon the Petitioner by defendants and fraud upon Petitioner and upon other federal courts by federal court employees; (d) the criminal tampering with federal court records by federal court employees; (e) the subornation of an official federal court reporter to falsify a *transcript* and to swear falsely to that falsified *transcript*; (f) the falsification of a *transcript* and false swearing thereto; (g) the suppression of *transcript* evidence by employees of the federal district court; (h) the subornation of the Clerk of the federal district court for the Eastern District of Virginia, Alexandria Division, to commit two counts of perjury, by attesting to the verity of two false, fraudulent, tampered, incomplete, *uncertified* federal district court records; (i) the transmittal of *uncertified*, tampered, falsified, incomplete federal district

5. The overt acts of the Cardinal Conspiracy, in particular in the instant action, include overt acts both lawful and unlawful.[32]

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court records to the Fourth Circuit court of appeals in two of Petitioner's appeals, including the instant action; (j) the wilful, deliberate noncompliance, repeatedly, by federal judges, with mandatory federal statutes; and (k) the wilful non-response to Petitioner's complaints of criminal activity by federal court employees and the cover-up of that criminal activity by federal court employees, inaction and obstruction of any investigation into the criminal charges, and misprision of felony of the Solicitor General of the United States for his actions in covering up the criminal activity by federal employees, when those criminal activities were pleaded first to the Deputy Solicitor General then to the Solicitor General in four letters over a period of four months.

[32] a. The Cardinal Conspiracy committed overt acts in the instant action, including: (a) failure to make a determination, consistent with *Coleman v. Thompson, supra,* that the dismissal decision itself does not abridge any constitutional rights; (b) failure to hear the Petitioner's action *de novo*; (c) misrepresentation in the June 19, 1995, *opinion* of the basis of the lower court's dismissal; (d) improperly renouncing the Fourth Circuit court's jurisdiction, after five months, in violation of the holding of *Ward v. Board of County Comm'rs, supra,* without hearing the merits of the constitutional challenges presented; (e) ignoring the lower court's failure to discharge its duties under 28 USC §2403 (b) and the Fourth Circuit court, itself, failing and refusing to discharge its own duties under 28 USC §2403 (b); (f) ignoring the lower court's failure to discharge its duties under 28 USC §2284, and ignoring the fact that the lower court's dismissal of a three-judge matter by a single district judge—without required determinations—is void for lack of jurisdiction of a single judge to dismiss; (g) affirming the lower court's dismissal under the purported authority of *nonexistent* Fed. R. Civ. P. 4 (m), and the Fourth Circuit court, itself, invoking the purported authority of *nonexistent* Fed. R. Civ. P. 4 (m); (h) subornation of a deputy clerk in the office of the Clerk of the federal district court to tamper and to falsify the *civil docket summary* records of the instant action and associated *transmittal forms* and to create the appearance administratively, but not the substance judicially, of a certified record, when the record was, in fact, *uncertified*; (i) subornation of the Clerk of the federal district court to commit perjury by swearing falsely to the verity of the false, fraudulent, tampered, incomplete, *uncertified* record in the instant action; (j) wrongfully forcing the termination of the Clerk of the federal district court (the Clerk's last day worked was June 2, 1995), when that Clerk would not commit perjury and swear falsely to the false, tampered, uncertified record in the instant action; (k) the Fourth Circuit court failing to effect correction and actual certification of the false, fraudulent, tampered, incomplete, *uncertified* federal district court record on appeal, in violation of 28 USC §1738, F.R.E. 901, and F.R.E. 902, when requested by Petitioner's written motions, and relying on that *uncertified* record, and, in particular, **relying knowingly** upon the tampered portions therof; (l) subornation of a deputy clerk in the office of the Clerk of the Fourth Circuit to tamper and to falsify the *civil docket summary* records of the instant action and to create the appearance administratively, but not the substance judicially, of a *bi partes* suit under appeal, when the appeal was, in fact, of an *ex parte* action, to lend support fraudulently to the dismissal for Petitioner's purported failure to serve the defendants in an *ex parte* action; (m) the falsification and tampering of Fourth Circuit court records in the instant action; (n) the failure of the Clerk of the Fourth Circuit to maintain the accuracy, verity, and integrity from tampering of the Fourth Circuit's own court records in the instant action; and (o) upon its occurrence, the certification by the Clerk of the Fourth Circuit of the instant Fourth Circuit

6. The Fourth Circuit court of appeals has relied upon the false record of the federal district court and has perpetuated (in Fourth Circuit court records) one or more of the misrepresentations and omissions, constituting three procedural traps, four material concealments, and four material misrepresentations, created in the federal district court's false, tampered, *uncertified* record in the instant action, to the effect that the Fourth Circuit court records in the instant action are tainted and false, to the consitutional detriment of Petitioner.

7. The wilful actions and failures of the Fourth Circuit court and of the lower court constitute overt actions which demonstrate not only prejudicial, reversible error, but also demonstrate the Fourth Circuit court's bias and actual malice against the Petitioner and against the Petitioner's causes of action.

8. The Cardinal Conspiracy has subjected a series of cases containing a constitutional challenge to one or more Virginia statutes—those cases of the Petitioner and those cases of other litigants—to wrongful or unlawful overt acts.[33]

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record on appeal, as an act of perjury, falsely and knowingly certifying as true a Fourth Circuit record which perpetuates the falsifications created in the false, tampered, *uncertified* federal district court record and introduces new falsifications by additional tampering of Fourth Circuit records, which will result in fraud upon the U.S. Supreme Court and upon the Petitioner.

b. For details of the misrepresentations and concealments contained in the two falsified *civil docket summaries* and associated *transmittal forms* transmitted to the Fourth Circuit court by the suborned clerk at the federal district court, see Appendix Exhibit 29, "Details of Tampering and Falsification of the Record on Appeal in the Instant Action," at pages A60-A62.

[33] The cases which have been subjected to the wrongful or unlawful overt acts of the Cardinal Conspiracy include, among others:

a. *Amer. Sec. Bank v. Dempsey Supply Corp.*, (Va. 19th Cir., Fairfax chan. # 121870, 1992; refused, Va. record no. 930590 [unpublished], 1993; cert. denied, S.Ct no. 93-236 [unpublished], 1993)—contains constitutionality challenge to the Virginia mechanics lien law;

b. *F.D.I.C. v. Corman Constr. Co. et al.*, (Va. 17th Cir., Arlington chan. # 90-1000, 1992; refused, Va. record no. 921452 [unpublished], 1993; cert. denied, as *Commonwealth Land Title Ins. Co. v. Corman Constr. Co.*, S.Ct no. 92-1871 [unpublished], 1993)—contains constitutionality challenge to the Virginia mechanics lien law;

c. *Breedlove v. Phillips, et al.*, (Va. 19th Cir., Fairfax at law # 117967, dism'd. 1992, reh. denied, 1993; refused, Va. record no. 931104 [unpublished], 1994, reh. denied [unpublished], 1994; cert. denied, S.Ct no. 93-1910 [unpublished], 1994)—contains constitutionality challenge to the Virginia mechanics lien law;

d. *Breedlove v. Hart, et al.*, (Va. 17th Cir., Arlington at law # 93-872, dism'd. [publication refused], 1992; dism'd. Va. record no. 941785 [publication refused], 1995, reh. denied [publication refused], 1995; cert.

9. The federal district court for the Eastern District of Virginia, Alexandria Division, and the Fourth Circuit court of appeals have subjected the Petitioner's instant action to, or have condoned, knowingly: administrative misprocessing, judicial misprocessing, criminal tampering, and overt actions of criminal conspiracy for the purpose of disposing of the instant action without any hearing on the merits—thus, denying Petitioner's federal constitutional and federal civil rights—to the end result of maintaining the enforceabliity of the unconstitutional Virginia mechanics' lien law and unconstitutional associated Virginia judicial procedures and customs and evading constitutional review of the challenged Virginia statutes and judicial procedures and customs. The federal courts sitting in Virginia have effected other cases wrongfully, materially, and prejudicially, demonstrating a pattern of abuse.

CONCLUSION

1. The Fourth Circuit court of appeals' dismissal, *itself*, of the appeal abridged one or more of Petitioner's federal constitutional rights, in that it violated constitutional due process and equal protection under law and denied procedural due process. The Fourth Circuit court of appeals ignored the holding of *Coleman v. Thompson, supra*, in its review of the *Brief for the*

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denied, S.Ct no. 95-140 [unpublished], 1995)—contains constitutionality challenge to the Virginia mechanics lien law;

e. *Ex Parte KENDALL H. BREEDLOVE, ex rel. Breedlove v. Phillips, et al., ex rel. Breedlove v. Hart, et al.*, (E.D. Va., dism'd, [publication refused], 1994; C.A.4, affrmd, docket no. 95-1071 [publication refused], 1995; pet. for reh. denied [publication refused], 1995; S.Ct. no. _____, pending) (the instant action)—contains constitutionality challenge to the Virginia mechanics lien law;

f. *Breedlove v. Tysons Manor Homeowners Association*, (E.D. Va., dism'd, [publication refused], 1994; C.A.4, affrmd, docket no. 94-2316 [publication refused], 1995; pet. for reh. denied [publication refused], 1995; S.Ct. nc 95-474, pending)— civil rights' suit, containing constitutionality challenge to the Virginia property owners association lien law;

g. *Ex Parte KENDALL H. BREEDLOVE, ex rel. Tysons Manor Homeowners Association, ex rel. Sky Bryce Association, Inc. v. Breedlove, et al.*, (E.D. Va., dism'd, [publication refused], 1994; C.A.4 pending)—contains constitutionality challenge to the Virginia property owners association lien law;

h. *Doe v. Roe*, other cases not yet identified at present.

Petitioner asserts that in the computerized docket files of federal district courts in Virginia, cases which may have been subjected to improper, wrongful, or unlawful overt acts of the Carfinal Conspiracy may be identified by code "950," constitutionality of state statute, on the first page of the civil docket summary. In Petitioner's two *ex parte* actions which suffered tampering of the federal court records (including the instant action), the civil docket summaries display code "950," even though the text entry for nature of the federal question misrepresents in words the true nature of the federal questions, thus, concealing the constitutional challenges to Virginia statutes.

Appellant, dated February 21, 1995, and of the *Petition for Rehearing*, dated July 1, 1995.

2. On the faces of the June 19, 1995, *opinion*, and of the August 10, 1995, *order* denying rehearing, the Fourth Circuit court of appeals: (a) failed *sua sponte* to make a determination, consistent with *Coleman v. Thompson, supra*, that the dismissal, *itself*, of the appeal, not on a fair and substantive basis, would not abridge any constitutional rights; and (b) failed *sua sponte* and refused, upon Petitioner's written motion, to discharge its mandatory duty under 28 USC §2403 (b), prior to letting stand the lower court's dismissal of the instant action, and dismissing the appeal, without rehearing, under the purported authority of *nonexistent* Fed. R. Civ. P. 4 (m). By so doing, the Fourth Circuit court deprived Petitioner wrongfully of his entitlement to the protection of *Coleman v. Thompson, supra*, and of his entitlement (as a matter of federal civil right) to the provisions of 28 USC §2403 (b), and did so without Due Process—notice and an opportunity to be heard.

3. Furthermore, the failures of the federal district court and of the Fourth Circuit court of appeals to discharge their judicial duties pursuant to 28 USC §2403 (b) are jurisdictional and, thus, the November 18, 1994, *dismissal order* of the federal district court and the Fourth Circuit court's June 19, 1995, *opinion* and August 10, 1995, *order* denying rehearing are each void for lack of jurisdiction to dismiss without the courts' discharge of their 28 USC §2403 (b) duties and without hearing the merits of the challenge to the constitutionality of the Virginia mechanics' lien law and associated Virginia judicial procedures.

WHEREFORE, Petitioner prays that a *writ of certiorari* issue from this Court to review the judgments of the Fourth Circuit court of appeals in *Ex Parte KENDALL H. BREEDLOVE, ex rel. Breedlove v. Phillips, et al., ex rel. Breedlove v. Hart, et al.*, docket no. 95-1071, as to (1) its failure to render a decision on the constitutionality challenge to the Virginia mechanics' lien law and associated Virginia judicial procedures; (2) its failure to hear *de novo* the instant appeal; and (3) its affirmance of the lower court's ruling based on a void *dismissal order* that the Petitioner failed "to properly serve the representatives of the State of Virginia," which dismissal rationale the Fourth Circuit

has mischaracterized as Petitioner's purported failure to serve defendants in an *ex parte* action.[34]

In the event this *Petition* is granted, Petitioner prays that this Court remand this case to a federal appeals court other than the Fourth Circuit court (preferably the Fifth Circuit court of appeals), with direction for the federal appeals court: (1) to perform its duties under 28 USC §2403 (b); (2) to render published opinion, in a manner consistent with *Connecticut v. Doehr, supra*, on the challenges raised in the instant appeal to the constitutionality of the Virginia mechanics' lien law, *Virginia Code (1950) §43-1* through *§43-23.2*, and associated Virginia judical procedures and delineated more fully in the Petitioner's *Brief for the Appellant* and *Reply Brief for the Appellant* to the Fourth Circuit court; and (3) to make written determinations consistent with *Coleman v. Thompson, supra.*

In the event that the dismissal decision, *itself*, in the instant appeal, is found to have abridged Petitioner's federal constitutional rights, that this Court direct the federal appeals court then: (1) to hear the merits of the appeal; and (2) to render the federal appeals court's published opinion, in a manner consistent with *Connecticut v. Doehr, supra*; together with such other and further relief as may seem proper to this Court.

Respectfully submitted,

Kendall H. Breedlove

Kendall H. Breedlove, *pro se*

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[34] It is imperative that the Supreme Court place no reliance upon any portion of any civil docket summary of the Fourth Circuit court, or of the federal district court, in the instant action. The Court may only place reliance in detailed examination of the *original* filings made by Petitioner with each court and the *original* orders entered by the courts.

CERTIFICATE OF SERVICE

SS: COMMONWEALTH OF VIRGINIA
CITY ~~County~~ of ALEXANDRIA to-wit:

KENDALL H. BREEDLOVE, being first duly sworn, upon his oath deposes and says that he is a Petitioner filing *pro se*, in this cause, and that on this 8th day of November, 1995, pursuant to Rule 29.5 (c) of the *Supreme Court Rules*, he mailed three copies each of the ***Petition for Writ of Certiorari*** by first-class mail, postage prepaid, addressed to the counsel of record for the defendants in the underlying *ex relatu* suits, who were represented by counsel, as follows:

Mr. John O. Easton
Jordan, Coyne & Savits, counsel of record for Defendant
James R. Hart
10486 Armstong Street
Fairfax, Virginia 22030

Mr. J. Charles Curran
Kidwell, Kent & Curran, counsel of record for Defendants
Joyce E. Horton and James H. Horton
9695-C Main Street
Fairfax, Virginia 22031

and three copies to the *pro se* defendant in the underlying *ex relatu* suits, who was not represented by counsel, as follows:

Mr. Calvin W. Phillips, *pro se*
201 West Broad Street
Suite 144
Falls Church, Virginia 22046

Pursuant to Rule 29.4 (c), citing that 28 USC §2403 (b) may be applicable, he mailed three copies of the *Petition for Writ of Certiorari* by certified mail, postage prepaid, as follows:

The Honorable James S. Gilmore, III
Attorney General of the Commonwealth of Virginia
Supreme Court Building
101 N. 8th Street
Richmond, Virginia 23219

Kendall H. Breedlove

Kendall H. Breedlove, *pro se*

THE FOREGOING CERTIFICATE OF SERVICE was subscribed and sworn to before me by Kendall H. Breedlove on the 8th of November, 1995.

Mary H Potter 11/8/95
Notary Public

My commission expires: 03-31-96

APPENDIX TO

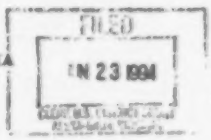
Ex Parte KENDALL H. BREEDLOVE,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPENDIX

Exhibit 1 Front Page of June 23, 1994, Complaint Showing Ex Parte Caption[1]



UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Ex Parte KENDALL H. BREEDLOVE,	
Complainant,	
ex rel.,	Civil Action, File No. 94-848-A
KENDALL H. BREEDLOVE,	
Plaintiff,	
v.	
JAMES R. HART, et al.	
ex rel.,	
KENDALL H. BREEDLOVE,	
Plaintiff,	
v.	
CALVIN W. PHILLIPS, et al.	
Defendants	

COMPLAINT

Complainant Kendall H. Breedlove, in the instant action, complains in *ex parte* action consisting of two counts, of three and five subcounts, respectively, and shows the Court the following:

COUNT I — Ex Relatu ***BREEDLOVE v. PHILLIPS, et al.***

SUMMARY

1. This Count I is divided into three subcounts which make claim for declaratory relief and injunctive relief arising under the Fourteenth Amendment and the Seventh Amendment of the Constitution of the United States, in regard to matters arising from four Virginia mechanics' liens, two of which were recorded November 27, 1991, and May 26, 1992, against Complainant's Florida Street property, in the land records of Arlington County, Virginia, and two of which were recorded January 14, 1992, and May 7, 1992, against Complainant's Castile Court property, in the land records of Prince William County, Virginia, all as more fully set forth below. Three of these mechanics' liens were filed in or claimed under the false, *feigned* claimant name of a not-in-life person, with false claimant address, false amount, with perjured oath, and forged signature. One of these false, unlawful liens was incorporated with'n and employed as true in the document dated May 22, 1992, and filed May 26, 1992, entitled, "Certificate of Partial Release of Mechanics' Lien."

[1] There are no named defendants in the original June 23, 1994, *Complaint*, and the federal district court failed to declare any defendants and failed to judicially join any defendants, pursuant to Fed. R. Civ. P. 19, even going to the extent of denying Petitioner's *pro se* motion for the trial court to determine any necessary service requirements, in order of September 7, 1994.

Exhibit 2 Unpublished June 19, 1995, Opinion of the Fourth Circuit Court of Appeals

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-1071

KENDALL H. BREEDLOVE,

Plaintiff - Appellant,

versus

JAMES R. HART; CALVIN W. PHILLIPS,[2]

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Senior District Judge. (CA-94-848-A)

Submitted : April 20, 1995 Decided: June 19, 1995

Before WIDENER, WILKINSON, and WILKINS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Kendall H. Breedlove, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

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[2] The civil docket summary transmitted by the federal district court to the Fourth Circuit court is false, fraudulent, incomplete, uncertified in violation of 28 USC §1738, F.R.E. 901, and F.R.E. 902, and was tampered administratively to create the false appearance of a *bi partes* suit for an action which was filed *ex parte*, captioned as *Ex Parte Kendall H. Breedlove*, and for which there are no named or declared or judicially-joined defendants.

Exhibit 2, continued[3]

PER CURIAM:

Appellant appeals from the district court's order dismissing his action pursuant to Fed. R. Civ. P. 4(m)[4] for failure to serve Defendants within 120 days after commencing his action.[5] We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court.* Breedlove v. Hart, No. CA-94-848-A (E.D. Va. Nov. 18, 1994). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

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* We deny Appellant's motions to amend the case caption, to publish the opinion, to certify the case to the Attorney General of Virginia under Fed. R. App. P. 44, to vacate a prior order from this Court, and to object to the admissibility of a docket sheet into evidence.

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[3] Note that, on its face, the *opinion* fails to set forth the Fourth Circuit court's compliance with 28 USC §2403 (b), but instead, demonstrates the court's refusal to comply by denying a motion for 28 USC §2403 (b) certification compliance in the court's footnote to the *opinion*. Also note that, on its face, the *opinion* fails to set forth the determinations required by *Coleman v. Thompson*, *supra*, that the dismissal decision, *itself*, does not abridge any constitutional rights.

[4] There is no Rule 4(m) in the *Federal Rules of Civil Procedure*; Rule 4 only contain subsections (a) through (j).

[5] The Fourth Circuit court has misrepresented the basis for the district court's dismissal. The text of the district court's November 18, 1994, *order* states:

> "This action is dismissed without prejudice pursuant to Fed. R. Civ. P. 4 (m). The court finds that plaintiff has not shown cause to excuse the failure to properly serve the representatives of the State of Virginia. Rather than explain the failure to serve the defendants, plaintiff persists in his position that this is an *ex parte* proceeding by which plaintiff means he need not serve any representative of the State of Virginia and that the court should on his unopposed motion declare certain Virginia acts unconstitutional."

Exhibit 3 Unpublished August 10, 1995, Order of the Fourth Circuit Court of Appeals[6]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
August 10, 1995

No. 95-1071
CA-94-848-A

KENDALL H. BREEDLOVE
Plaintiff - Appellant

v.

JAMES R. HART; CALVIN W. PHILLIPS,
Defendants - Appellees

- - - - - - - - - - - - - - -

On Petition for Rehearing with
Suggestion for Rehearing In Banc

- - - - - - - - - - - - - - -

The appellant's petition for rehearing and suggestion for rehearing in banc and supplement were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Bert M. Montague

CLERK

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[6] The *Petition for Rehearing* alleged, among other things, "a pattern of judicial conduct demonstrating a conspiracy of silence to maintain enforceability of unconstitutional Virginia law and to evade federal constitutional review, resulting in denial of procedural due process to Complainant and converted into denial of Complainant's federal constitutional rights and federal civil rights," which pattern of conduct included the federal district court for the Eastern District of Virginia.

Exhibit 4 Petitioner's August 18, 1995, Notice of Appeal

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

***Ex Parte* KENDALL H. BREEDLOVE,** Appellant,	:	
ex relatu,	:	Docket No. 95-1071
Breedlove v. Hart, et al.	:	
ex relatu,	:	
Breedlove v. Phillips, et al.	:	

APPELLANT'S NOTICE OF APPEAL

COMES NOW the Appellant, Kendall H. Breedlove, *pro se*, and states as follows for his Notice of Appeal:

1. Appellant declares his intention, in compliance with the Federal Rules of the Supreme Court, to file an appeal with the Supreme Court of the United States, or to seek a writ of certiorari from that court, from the final determination by this Court:

a. In order dated June 19, 1995, affirming the lower, federal district court's decision; and

b. In order dated August 10, 1995, denying Appellant's timely-filed, *Petition for Rehearing*, dated July 1, 1995, and suggestion for rehearing en banc.

2. Appellant states that his Constitutional rights to due process, to equal protection under law, and to civil trial by jury have been denied to him and that he has been denied procedural due process.

3. Appellant asks that the U.S. Court of Appeals for the Fourth Circuit stay any mandate pending review by the Supreme Court of the United States in the instant action. The U.S. Court of Appeals for the Fourth Circuit has failed to rule on all of Appellant's motions filed with the Fourth Circuit court before closing the case. Among those motions unresolved is: *Appellant's Motion (a) for Writ of Certiorari to the Federal District Court for Complete Record; and (b) for the Clerk of the*

Fourth Circuit Court of Appeals to Effect Correction of the Unattested, Tampered District Court Record (Lacking the 28 USC §1738 Authentication of the Clerk of the Federal District Court); Prior to Review of Petition for Rehearing and Prior to U.S. Supreme Court Review, dated July 10, 1995.

Respectfully submitted,
(signed) *Kendall H. Breedlove*
Kendall H. Breedlove, *pro se*
2831 Gallows Road, Suite 145
Falls Church, VA 22042

CERTIFICATE

The undersigned hereby certifies that he caused one copy of the foregoing **Appellant's Notice of Appeal** to be sent by first-class mail, postage prepaid, addressed to the counsel of record for the defendants in the underlying *ex relatu* suits, who were represented by counsel in the underlying *ex relatu* suits, although these *ex relatu* defendants were not named, or declared, or judicially-joined as parties defendant in the instant *ex parte* action, as follows:

Mr. John O. Easton
Jordan, Coyne & Savits, counsel of record for Defendant
James R. Hart
10486 Armstong Street
Fairfax, Virginia 22030

Mr. J. Charles Curran
Kidwell, Kent & Curran, counsel of record for Defendants
Joyce E. Horton and James H. Horton
9695-C Main Street
Fairfax, Virginia 22031

and one copy to the *pro se* defendant in the underlying *ex relatu* suits, who was not represented by counsel in the underlying *ex relatu* suits, although this *ex relatu* defendant was not named, or declared, or judicially-joined as party defendant in the instant *ex parte* action, as follows:

Mr. Calvin W. Phillips, *pro se*
201 West Broad Street
Suite 144
Falls Church, Virginia 22046

and, pursuant to Fed. R. App. P. 44 and 28 USC §2403 (b), citing that 28 USC §2403 (b) may be applicable, in that the instant action contains a challenge to the constitutionality of the Virginia mechanics' lien law, one copy to be sent by first-class mail, postage prepaid to the Attorney General of Virginia, addressed to him at the following addresses:

The Honorable James S. Gilmore, III
Attorney General of Virginia
Supreme Court Building
101 N. 8th Street
Richmond, Virginia 23219

on this **18th** of August, 1995.

(signed) *Kendall H. Breedlove*

Kendall H. Breedlove, *pro se*

2831 Gallows Road, Suite 145
Falls Church, VA 22042

Exhibit 5 Unpublished August 18, 1995, Order of the Fourth Circuit Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
August 18, 1995

No. 95-1071
CA-94-848-A

Breedlove v. Hart

MANDATE

The judgment of this Court dated 6/19/95 takes effect today.[7]

BERT M. MONTAGUE

CLERK

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[7]On July 20, 1995, the Petitioner herein also filed his ***Petition for Certiorari*** in the real, ***ex relatu*** case, ***Breedlove v. Hart, et al.***, (Va., 17th Cir., Arlington at law #93-873, dism'd, 1994; Va. record no. 941785, dism'd, [unpubl.], 1995; S.Ct. no 95-140, cert. denied, 1995), which contains a constitutional challenge to the Virginia mechanics' lien law, by its application.

Exhibit 6 Unpublished August 23, 1995, Order of the Fourth Circuit Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
August 23, 1995

No. 95-1071
CA-94-848-A

KENDALL H. BREEDLOVE
Plaintiff - Appellant

v.

JAMES R. HART; CALVIN W. PHILLIPS,
Defendants - Appellees

ORDER

Appellant has filed a motion for writ of certiorari to federal district court for complete record and for the clerk of the Fourth Circuit Court of Appeals to effect correction of the unattested, tampered district court record prior to review of petition for rehearing and prior to U.S. Supreme Court Review.

Appellant's motion is denied.[8]

FOR THE COURT,

/s/ Bert M. Montague

CLERK

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[8]By this order, the Fourth Circuit court has refused in the instant action to effect correction of a false, fraudulent, tampered, incomplete, *uncertified*, federal district court record on appeal—a record which creates the false appearance of a *bi partes* suit. Why?

Exhibit 7 Unpublished September 22, 1995, Order of the Fourth Circuit Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
September 22, 1995

No. 95-1071
CA-94-848-A

KENDALL H. BREEDLOVE
Plaintiff - Appellant

v.

JAMES R. HART; CALVIN W. PHILLIPS,
Defendants - Appellees

ORDER

Appellant has filed a request for issuance of a stay of the mandate which the Court has construed as a motion to recall the mandate.

Appellant's motion is denied.[9] Entered at the direction of Judge Wilkins, for a panel consisting of Judge Widener, Judge Wilkinson and Judge Wilkins.

FOR THE COURT,

/s/ Bert M. Montague

CLERK

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[9]In Petitioner's previous appeal of *Breedlove v. Tysons Manor Homeowners Assoc.*, (E.D. Va, dism'd, 1994; C.A.4, affm'd, docket no. 94-2316, 1995; S.Ct. no. 95-474, pending), a civil rights suit containing a constitutional challenge to the Virginia property owners association lien law, the Fourth Circuit court was willing to stay its mandate pending review by the U.S. Supreme Court. Why not for the instant action?

*Exhibit 8 **January 18, 1995, Letter with Disclosure Statement***

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
1100 EAST MAIN STREET

BERT M. MONTAGUE
CLERK

U.S. COURT HOUSE ANNEX
RICHMOND, VIRGINIA 23219

TELEPHONE
(804) 771-2213

January 18, 1995

Kendall H. Breedlove
2831 Gallows Road #145
Falls Church, VA 22042

Re: 95-1071 Breedlove v. Hart[10]
CA-94-848-A

Dear Mr. Breedlove:

The appeal was docketed in this Court on 1/18/95, pursuant to Rule 12(a) of the Federal Rules of Appellate Procedure. Docket number 95-1071 should be placed on all papers subsequently submitted to this Court.

An informal briefing schedule will be established and forwarded to the parties upon receipt of certification that the transcript has been filed and the record is complete.

The Disclosure Statement form is enclosed and must be completed and returned to this office within ten days of the date of this letter.

Yours truly,
BERT M. MONTAGUE
Clerk
By: /s/ *Sharon A. Wiley*
Deputy Clerk

cc: Charles Hopchas
John Cox
Doris R. Casey, Clerk

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[10] This January 18, 1995, letter is the first occurrence of the wrongful captioning of the instant *ex parte* action as a *bi partes* suit, following the Petitioner's submission by certified mail #Z 001-504-578, on December 28, 1994, of his *Docketing Statement*, captioned, "*Ex parte Kendall H. Breedlove,*" *which* set forth the constitutional challenges to Virginia mechanics lien statutes and associated Virginia judicial procedures. Petitioner served that statement, concurrently, by certified mail upon the Governor of Virginia, and upon the Attorney General of Virginia. Previously, on January 11, 1995, the federal district court transmitted a notice of filing to the Fourth Circuit, which wrongfully captioned the instant *ex parte* action as "Breedlove v. Hart, Phillips," and concealed that wrongful nomenclature from Petitioner.

Exhibit 9 February 28, 1995, Clerk's Letter Constituting Notice under 28 USC §2403 (b)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
1100 EAST MAIN STREET
BERT M. MONTAGUE U.S. COURT HOUSE ANNEX TELEPHONE
CLERK RICHMOND, VIRGINIA 23219 (804) 771-2213

February 28, 1995

James S. Gilmore, III
Attorney General of Virginia
Supreme Court Building
101 North 8th Street
Richmond, VA 23219

Re: 95-1071, Breedlove v. Hart[11]
CA-94-848-A

Dear Mr. Gilmore:

Enclosed pursuant to 28 U.S.C. § 2403 (b) is appellant's pleading which states that this case raises a constitutional challenge to a Virginia statute.[12] I also enclose for your information a copy of the district court's order from which this appeal was taken.

Please contact me if you have any questions regarding this matter.

Yours truly,
BERT M. MONTAGUE
Clerk
By: /s/ *Patricia S. Connor*
Chief Deputy Clerk

PSC:ldj
Enclosures
cc: Kendall H. Breedlove

[11] Note the misrepresentation of the caption of the instant *ex parte* action as a *bi partes* suit. And why "Breedlove v. Hart?" The district court's order which the Clerk enclosed is wrongfully captioned "Breedlove v. Phillips, et al.," while the *Brief for the Appellant*, the pleading enclosed with the letter, is captioned *Ex Parte KENDALL H. BREEDLOVE*, in 14 point type.

[12] Note the lack of judicial *order* certifying the constitutional challenge, in compliance with 28 USC §2430 (b). The Clerk only refers to Petitioner's claim that the case raises a constitutional challenge.

Exhibit 10 March 14, 1995 letter from Virginia Attorney General

COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

March 14, 1995

Ms. Patricia S. Connor
Chief Deputy Clerk
United States Court of Appeals
for the Fourth Circuit
1100 East Main St., 5th Floor
Richmond, VA 23219

Re: Breedlove v. Hart[13]
No. 95-1071

Dear Ms. Connor:

This is to acknowledge receipt of your letter to Attorney General Gilmore dated February 28, 1995, pursuant to 28 U.S.C. § 2403 (b), enclosing appellant's pleading in the above case.[14] Appellant claims that his case raises a constitutional challenge to a Virginia statute.

The Attorney General thanks you for bringing this matter to his attention. However, upon review of the papers, it is our view that even if appellant's case raises a valid constitutional claim, which we dispute, such claim is not properly before the Court of Appeals at this time. Appellant's case was dismissed by the District Court on procedural grounds (his failure to properly serve any defendant).[15] We believe the District Court's decision was correct and should be affirmed. In the event the case

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[13] Note the misrepresentation of the caption of the instant *ex parte* action as a *bi partes* suit. The pleading—the *Brief for the Appellant*—of which this letter acknowledges receipt, bears the caption *Ex Parte KENDALL H. BREEDLOVE, ex rel. Breedlove v. Phillips, et al., ex rel. Breedlove v. Hart, et al.*

[14] Note the failure to acknowledge receipt of the district court's November 18, 1994, *dismissal order* from which the appeal was taken. That dismissal order bears the wrongful caption "Breedlove v. Phillips, et al."

[15] Note: (a) the misrepresentation of the district court's dismissal rationale, which dismissed for Petitioner's purported failure "to properly serve the representatives of the State of Virginia;" in conjunction with (b) the misrepresentation of the caption of the instant *ex parte* action as a *bi partes* suit.

should be remanded to the District Court for further proceedings, we will consider then whether intervention under 28 U.S.C. § 2403(b) might be advised.

Thank you for attention.

Sincerely,
(signed) Greg E. Lucyk
GREGORY E. LUCYK
Senior Assistant Attorney General

242/228
cc: Kendall H. Breedlove, pro se

Exhibit 11 Unpublished March 21, 1995, Order of the Fourth Circuit Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
March 21, 1995

No. 95-1071
CA-94-848-A

KENDALL H. BREEDLOVE
Plaintiff - Appellant

v.

JAMES R. HART; CALVIN W. PHILLIPS,
Defendants - Appellees

ORDER

The appellant has filed a motion to amend the caption.[16]

The motion is deferred pending consideration of the appeal on the merits.

FOR THE COURT - BY DIRECTION

/s/ Bert M. Montague

CLERK

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[16] The motion to which this order refers is *Appellants' Motion To Sever Noticed Ex Relatu Defendants, Who Were Not Named or Declared or Joined Defendants*, dated March 14, 1995, which the Fourth Circuit court denied in the court's footnote to the June 19, 1995, *opinion*, mischaracterizing the motion therein as a motion to amend the caption.

Exhibit 12 Background to the instant ex parte *action*

1. For extortionate purposes, private individuals, Phillips, *et al.*, filed—under the Virginia mechanics' lien law—two false, fraudulent, forged, perjured mechanics' liens maliciously, in the feigned, fictitious name of a not-in-life person—*Dennis Anderson*. The first *Dennis Anderson* lien was filed November 27, 1991, for $51,768.09 on an improved property in Arlington County, Virginia, claiming for work allegedly done over a period of more than 150 days prior to the date of lien, based on an alleged unsecured verbal contract for work beyond one year and for an amount in excess of $25,000—conditions invoking the Virginia statute of frauds.[17] The second *Dennis Anderson* lien was filed January 14, 1992, $2,907.00 on an improved property in Prince William County, Virginia, on an alleged unsecured verbal contract.

2. As a result of these liens on the two properties so liened, Complainant Breedlove suffered deprivation of significant property interests and liberty interests—defamation of reputation and creditworthiness, with palpable consequences (resulting in mortgage foreclosures and abandonment of his real estate investment business).

3. The property-interest deprivations continued for 17 months on the Arlington property, and for 11 months on the Prince William property. The continuation of these deprivations was the result Phillips, *et al.*, and their attorney, Hart, filing two additional mechanics' liens plus bringing and continuing suit to enforce in Arlington. The additional third lien, May 7, 1992, was for $11,700.00, on the Prince William property. The additional fourth lien, May 22, 1992, was for $13,014.00, on the Arlington property, and was contained within a "certificate of partial release of mechanics' lien," which released the claim for *alleged* work by *Dennis Anderson*, done in excess of 150 days prior to the November 27, 1991, date of the *Dennis Anderson* lien,[18] and changed the name of the lien claimant to Phillips, without filing any statutorially-required legal-holder *affidavit*, or alerting the court that the November 27, 1991 lien was false, fraudulent, forged, and contained perjured *affidavit*, signed,

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[17] The Virginia statute of frauds, *Virginia Code §11-2*, requires written contract for work done beyond one year and for amounts $25,000 and above.

[18] The Virginia mechanics' lien law, *Virginia Code §43-1, et seq.*, only permits liens to claim for work done within 150 days prior to the date the lien is filed.

sworn to, and filed in the name of a not-in-life person—*Dennis Anderson.*

4. Attorney Hart, and his clients, Phillips, *et al.*, maliciously brought the suit to enforce in the name of and on behalf of Phillips, claiming under the November 27, 1991, and May 22, 1992, false, fraudulent, forged, perjured mechanics' liens on the Arlington property. Attorney Hart and Phillips, *et al.*, brought this suit to enforce **after** Complainant Breedlove had informed attorney Hart twice in writing of the false, fraudulent, forged, perjured nature of the liens, thus depriving attorney Hart of probable cause. Despite the written information provided to attorney Hart, the suit which attorney Hart prepared and filed May 26, 1992, employed the false, fraudulent, forged, perjured lien documents as true and represented them as true to the court by *affidavit* of Phillips' sister, as Phillips' agent. At that time, Phillips was incarcerated in Tennessee for bank forgery and interstate flight to avoid imprisonment. Attorney Hart's firm had served as Phillips' defense counsel in the criminal extradition matter, during February-March, 1992, and was due an $18,000 legal fee from Phillips, *et al.*, for those services.

5. Complainant Breedlove sued initially in *Breedlove v. Phillips, et al.*, (19th Cir., [unpublished], Fairfax at law #117967, 1993) in the Circuit Court of Fairfax County, Virginia, in a 12-count action sounding in common-law defamation, statutory defamation, slander of title, and civil conspiracy. The defamation counts of this action were dismissed on *demurrer*, based on the holding of *Donohoe Construction Co. v. Mount Vernon Associates,* 235 Va. 531, 369 S.E.2d 857 (1988), that a mechanics' lien is a judicial action and, as such, is entitled to absolute privilege. The Fairfax court applied *Donohoe* over two objections by the Complainant that: (1) under the wording of *Donohoe*, only the lien claimant may assert the defense of absolute privilege, not other defendants; (2) absolute privilege only applies when there had not been abuse of privilege, as privilege was abused by the defendants Phillips, *et al.*, which abuse by Phillips, *et al.*, was contrary to the exception to absolute privilege for abuse of privilege, as held in *Alexandria Gazette Corp. v. West,* 198 Va. 154, 93 S.E.2d 274 (1956) and *White v. Nichols,* 3 How. (44 U.S.) 266, 11 L.Ed 591, — S.Ct. — (1845).; and (3) the *Dennis Anderson* liens filed by Phillips' were sham.

6. Complainant Breedlove next filed two chancery suits to obtain declarations by the Circuit Court of Arlington County, Virginia, in two *Virginia Code §43-17.1* validity hearings, that each of the initial and subsequent mechanics' liens on the Arlington property (under which Phillips, Hart, *et al.*, had brought suit to enforce) were invalid. The court ruled in each of the *§43-17.1* validity hearings that each of the two Arlington liens "is and was invalid." These two *§43-17.1* validity adjudications rendered the Complainant's allegations of forgery, perjury, and fraud in the subject mechanics' liens *res judicata*.

7. Partially on the basis of these *§43-17.1* court adjudications, Complainant Breedlove petitioned to have reheard the *demurrer* hearing in the Fairfax Circuit Court, which dismissed the 10 defamation counts. The Fairfax court denied the Complainant's petition for rehearing.

8. Complainant Breedlove petitioned the Virginia Supreme Court to hear the appeal of *Breedlove v. Phillips, et al.*, (Va., record no. 931104 [unpublished], 1994). The Virginia Supreme Court refused to hear the appeal, citing no trial-court error, and refused without comment Complainant Breedlove's petition to rehear.

9. Complainant Breedlove petitioned the United States Supreme Court for writ of certiorari in *Breedlove v. Phillips, et al.* (S.Ct. no. 93-1910, 1994). The Supreme Court refused certiorari.

10. In July, 1993, to meet the statute of limitations, Complainant Breedlove filed suit in the Circuit Court of Arlington County, Virginia to pursue the route for redress set forth in *Donohoe, supra*. The *Donohoe* route is to receive adjudication under *Virginia Code §43-17.1* that the mechanics' lien is invalid, then to bring suit either for malicious prosecution (malicious use of civil process) or for abuse of process. Complainant Breedlove sued attorney Hart and his clients (Phillips, *et al.*) in the Circuit Court of Arlington County, Virginia, in a five-count action sounding in malicious use of civil process, abuse of process, and civil conspiracy.

11. After filing the five-count suit in Arlington Circuit Court, which involved additional defendants as well as the

defendants in the Fairfax suit, Complainant Breedlove nonsuited voluntarily the remaining two surviving civil conspiracy counts of the Fairfax suit. The trial judge in Fairfax County had denied Complainant's discovery request to Phillips' sister and her husband for production of their telephone bills and bank check records. These records for which discovery was sought were expected to yield the evidence to support Complainant's allegations of conspiratorial communications between attorney Hart and Phillips' sister and her husband, and three-way communications with Phillips, and to support allegations of motive by their obligation to pay or payment of legal fees to Hart's law firm on behalf of Phillips' criminal defense.

12. After 10 months of intense litigation in the Arlington court, involving approximating 1,200 pages of pleadings, the court dismissed the five-count action on third *demurrer*, under the English rule, as that English rule is set forth in *Ayyildiz, M.D. v. Kidd*, 220 Va. 1080, 266 S.E.2d 108 (1980). Complainant Breedlove pointed out to the Arlington trial judge that the Virginia interpretation of the English rule is at variance with the interpretation of the English rule in other states, and that difference of interpretation is not the result of state statute and therefore peculiar either to Virginia or to other States, as sovereign states.

13. Shortly prior to dismissing the case, the Arlington judge had quashed the Complainant's *subpoena duces tecum* to the telephone company for copies of the home and business telephone records of Phillips' sister and husband for the relevant period, which sought the hard evidence of conspiratorial communications between them and attorney Hart, as pleaded in the *motions for judgment*. As extortion had been pleaded in the *motions for judgment*, at the Complainant's request, the Arlington judge agreed to seal the *subpoenaed* telephone records upon their receipt by the court and so ordered.

14. The dismissal of malicious prosecution, abuse of process, and conspiracy counts in this *ex relatu* case was based on the following rulings by the Arlington court:

a. As to pleadings—

(1) that the allegations of the second amended motion for juegment were not an improper pleading, but that the pleaded false, fraudulent, forged, perjured mechanics' liens are not properly the basis of either malicious prosecution or abuse of process causes of action in Virginia.

b. As to malicious prosecution—

(1) that a Virginia mechanics' lien does not cause seizure of property (not withstanding the fact that the Arlington court had twice exercised its *in rem* jurisdiction previously in the *§43-17.1* hearings, regarding these false mechanics' liens, by virtue of the liens' seizure of the *res*).

c. As to abuse of process—

(1) that abuse of process only applies in Virginia to events subsequent to *properly-issued* process and, because the initial November 27, 1991 mechanics' lien was improperly issued, there could be no abuse of such an improperly-issued process. The May 22, 1992 mechanics' lien (charged as being abusive of process) did not abuse the November 27, 1991 mechanics' lien, even though the May 22, 1992 lien:

(a) had changed the name of the claimant and released part of the lien amount claimed (1) to exclude work alleged done before 150 days prior to the November 27, 1991 filing; and (2) to fall below the $25,000 threshold of the Virginia statute of frauds on an aleged unsecured, verbal contract, while still claiming under the initial, improperly-issued, November 27, 1991 lien of, the claim of, and the pretended right of a not-in-life fictitious, feigned claimant, *Dennis Anderson*[19] and

(b) had employed the initial false, fraudulent, forged, perjured November 27, 1991 mechanics' lien as true and as basis for suit to enforce, the subsequent May 26, 1992 lien could not be an abuse of the initial November 27, 1991 lien process, even though being based upon forged documents and perjured supporting *affidavits*, and being represented to the court as true in suit to enforce, constituting fraud on the court.

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[19] Bringing suit in false, feigned names of not-in-life persons has been held in Virginia to be an abuse of the processof the court in *Howard v. Rawson*, 29 Va (2 Leigh) 733 (1830) and in *Pates v. St. Clair*, 52 Va (II Gratt. 22) 25 (1854).

d. As to conspiracy—

(1) that there could be no civil conspiracy if there was no malicious prosecution and no abuse of process, despite the fact that the Complainant had alleged illegal purpose (*i.e.*, extortion) and eight specific illegal means by the defendants to carry out the extortion.

15. Complainant Breedlove petitioned the Virginia Supreme Court to hear the appeal of ***Breedlove v. Hart, et al.***, (Va., record no. 941785 [unpublished], 1995). The Virginia Supreme Court dismissed the appeal, citing no trial-court error, and refused without comment Complainant Breedlove's petition to rehear.

16. Complainant Breedlove petitioned the United States Supreme Court for writ of certiorari in ***Breedlove v. Hart, et al.*** (S.Ct. no. 95-140, 1995). The Supreme Court refused certiorari.

Exhibit 13 Detailed course of proceedings of the instant* ex parte *action

1. On June 23, 1994, Complainant Breedlove filed his original *Complaint* in this *ex parte* action, dated June 22, 1994, alleging causes of action under *28 USC §2201* and under *42 USC §1983*, and requesting a three-judge district court, in accordance with 28 USC §2284.[20] Complainant mailed copies of the *Complaint*, postage prepaid, certified mail, return receipt requested, to the Governor of Virginia and to the Attorney General of Virginia, in accordance with 28 USC §2403 (b) and 28 USC §2284.

2. On June 27, 1994, the return receipts for those two certified mailings to the Governor and the Attorney General of Virginia were signed as receipts for the certified mail pieces at the offices of those two officials.

3. On July 5, 1994, by *praecipe*, Complainant filed with the district court copies of (a) the receipts for certified mail as proof of mailing copies of the *Complaint* to the Governor of Virginia and to the Attorney General of Virginia and (b) the signed return receipts for those two pieces of certified mail: (1) receipted for the Governor's office by Frank L. Pollard [middle initial unclear], dated June 27, 1994; and (2) receipted for the Attorney General's office by J. Robertson [last name unclear], dated June 27, 1994.

4. a. On July 12, 1994—20 days after the *Complaint* was filed and within the time period permitted by Rule 12 (a) of the *Federal Rules of Civil Procedure* for filing responsive pleadings—Mr. Gregory E. Lucyk, Senior Assistant Attorney General wrote to the Clerk of the Court, in response to the *ex parte Complaint*, stating in part:

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[20] "When application for statutory three-judge court is addressed to district court, its inquiry is limited to determine whether constitutional question raised is substantial, whether complaint at least formally alleges basis for equitable relief, and if these criteria are met, it is impermissible for single judge to decide merits of the case, either by granting or by withholding relief." [*Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 8 L.Ed.2d 794, 82 S.Ct. 1294 (1962).]

"Re: Kendall H. Breedlove v. James R. Hart, et al.
C.A. No. 94-848-A

"Dear Ms. Casey:

" Plaintiff Kendall Breedlove has named two private citizens as defendants in the above suit alleging they filed 'false, unlawful mechanics liens' against his property. Among other things, he claims that the Virginia mechanics' lien statutes are unconstitutional. He has not named the Commonwealth or any state official as a defendant, however.

" Breedlove mailed a copy of his complaint to this office.[21] I understand he has refused to seek or to allow any summons to be issued, and that none of the named defendants have been served. I don't intend to file anything in this case on behalf of the Commonwealth to address the purported constitutional issue unless directed to do so by the Court. I will appreciate if you would let me know in writing in the event the Court desires a response from the Commonwealth, or otherwise takes some action to dispose of this matter."

b. Senior Assistant Attorney General Lucyk wrongfully miscaptioned the instant *ex parte* action as a *bi partes* suit, and refered to it as a suit. Mr. Lucyk acknowledged receiving a copy of the *Complaint* (in line one, paragraph two of his letter, above). Mr. Lucyk did not object to the service of notice under 28 USC §2403 (b), or to the jurisdiction of the Court. Thus, the defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived, pursuant to F. R. Civ. P. 12 (h). Mr. Lucyk did not limit the nature of his appearance on behalf of the Commonwealth.[22]

5. On July 14, 1994, Senior District Judge Albert V. Bryan, Jr., wrote back to Mr. Lucyk, again wrongfully miscap-

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[21] To understand the misrepresentation inherent in Mr. Lucyk's letter, see a copy of the front page of Petitioner's June 23, 1994, *Complaint* (which is the complaint Mr. Lucyk refers to receiving) as Appendix Exhibit 1, at page A2, which shows the *ex parte* caption and sets forth no "named defendants," who must be served.

[22] See copy of Mr. Lucyk's July 12, 1994, letter as Appendix Exhibit 14, at page A35.

tioning the instant *ex parte* action as a *bi partes* suit—*Breedlove v. Hart, et al.*—and stated:

"Re: Breedlove v. Hart, et al.[23]
Civil Action No. 94-848-A[24]

"Dear Mr. Lucyk:

" Your letter of July 12, 1994, to the clerk has been referred to me for reply. Mailing a copy of the complaint, of course, is not sufficient service unless service is accepted by the defendant. Unless he [*Complainant Breedlove*] effects proper service within 120 days from the filing of his complaint, it will be dismissed pursuant to F. R. Civ. P. 4(m)." [25,26]

6. On July 15, 1994, copies of both Mr. Lucyk's July 12, 1994, letter and Judge Bryan's July 14, 1994, response to it were mailed to the Complainant by Judge Bryan's office.

7. a. On August 4, 1994, due to the confusion as to notice jurisdiction raised by this exchange between Virginia and the Senior District Judge, Complainant filed *pro se*, in good faith, with the federal district court his *Complainant's Motion to Determine Any Necessary Service Requirements*, dated August 4, 1994, and served copies of that motion by mail upon the Governor of Virginia and upon the Attorney General of Virginia.

b. At the time of filing this motion, Complainant did not notice it immediately for hearing, due to the Complainant's other heavy litigation workload. In this motion, Complainant prayed the Court as follows:

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[23] Why would a district judge who had had the June 23, 1994, *Complaint* in hand for three weeks—on its face captioned *Ex Parte KENDALL H. BREEDLOVE*—with no motions filed, no oral argument, and no *sua sponte* actions by the court to inquire into the question of whether any necessary defendants needed to be joined judicially, pursuant to Fed. R. Civ. P. 19, refer to the instant action by any nomenclature other than the *ex parte* caption appearing on the face of the *Complaint*, except that such reference be for wrongful purpose?

[24] Note that the judge has underlined the civil action number, rather than adhering to the common procedure of underlining the caption of the action.

[25] No F. R. Civ. P. 4 (m) exists in the current bound volume of the *Federal Rules of Civil Procedure*, or in its 1993 or 1994 cumulative supplements.

[26] See copy of Judge Bryan's July 14, 1994, letter as Appendix Exhibit 15, at page A36.

" WHEREFORE, Complainant moves this Court to rule on the parties, if any, who must be made party or who must be served with court process in this *ex parte* action, and the nature of service of process or notice required; that if any parties be found to require service of process, that Complainant be given 120 days from the date of such ruling to accomplish such service of process; that if there be any defects in Complainant's pleading, that Complainant be given leave to amend his pleading; together with such other relief as this Court may deem appropriate."

c. As exhibits 3 and 4 to this August 4, 1994, motion, Complainant placed the letters of both Senior Assistant Attorney General Lucyk and Judge Bryan, respectively, into the official court record in the instant action.

8. On August 5, 1994, Complainant forwarded a courtesy copy of Complainant's filed August 4, 1994, motion to Judge Bryan personally, with a cover letter. This action by Complainant was in response to Judge Bryan's having mailed the copies of the July 12 and July 14 letters to Complainant. In this August 5, 1994, letter to Judge Bryan, Complainant stated in part, as follows:

"I intend to call up this motion shortly by *praecipe*, with five-day notice of the scheduled hearing date to the Governor and the Attorney General of Virginia for that hearing, ..."

9. On September 7, 1994, the Complainant by *praecipe*, dated September 7, 1994, and filed by mail on that date, noticed his August 4, 1994, motion for hearing on September 16, 1994, at 10:00 A.M. Complainant served copies of this *praecipe* by mail upon the Governor and the Attorney General of Virginia.

10. Also on September 7, 1994, the Court entered *order* dated September 7, 1994, denying Complainant' August 4, 1994, motion to determine any service requirements. This September 7, 1994, *order* was signed by a single judge—Judge Bryan. The Court disregarded Complainant's stated intent to notice the August 4, 1994, motion for hearing, and entered its *order* without notice and without opportunity for Complainant to be heard in oral argument.

11. a. On September 12, 1994, dismayed by the unilateral, *in camera, sua sponte* action of the Court in the September 7, 1994, *order*, Complainant filed with the federal district court: (a) his *Complainant's Motion For Review of Single-Judge's Action by Three-Judge Court*, dated September 12, 1994, and (b) his *Complainant's Motion For Written, Published, Self-Contained Memorandum Opinion of the Court's Findings, Rulings, and Decision*, dated September 12, 1994.

b. Complainant noticed these two motions for hearing by *praecipe*, dated September 12, 1994, with the hearing on the two motions being noticed for September 16, 1994, at 10:00 A.M., the same hearing date and time previously set by September 7, 1994, *praecipe*. Complainant served copies of these two motions and this *praecipe* by mail upon the Governor and the Attorney General of Virginia.

12. a. On September 16, 1994, seven minutes prior to the scheduled time for Complainant's case to be called, Complainant was prevented from arguing his motions by an administrative officer of the court escorting Complainant out of the courtroom and locking the courtroom door, with the Complainant left standing outside the courtroom.[27]

b. On the Court's civil docket of September 16, 1994, the instant *ex parte* action was scheduled for hearing. However, it was miscaptioned as *Breedlove v. Hart, et al.*, by the office of the clerk of the court.[28]

13. On September 16, 1994, without opportunity for Complainant to be heard in oral argument, the Court entered *order* dated September 16, 1994, (a) denying Complainant's September 12, 1994, *Motion For Review of Single-Judge's Action by Three-Judge Court*, and (b) denying Complainant's September 12, 1994, *Motion For Written, Published, Self-Contained Memorandum Opinion of the Court's Findings, Rulings, and Decision*. This September 16, 1994, order was signed by a single judge—Judge Bryan.

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[27] A copy of Complainant's *affidavit*, dated September 16, 1994, concerning non-hearing of two motions for September 16, 1994, in *Ex Parte* BREEDLOVE, C.A. no. 94-848-A, was presented in the *Brief for the Appellant*, as Appendix Exhibit 21, at page A-75, thereof.

[28] See copy of the Court's September 16, 1994, civil docket, internal page 7, fourth case, as Appendix Exhibit 17, at page A38.

14. Also on September 16, 1994, Complainant made *affidavit*, dated September 16, 1994, verifying the truth of the factual allegations in his June 23, 1994, *Complaint*; **thus converting the June 23, 1994 *Complaint* into a sworn *Complaint*.** Complainant had filed his *affidavit* with the Court by *praecipe*, dated September 16, 1994, via first-class, certified mail, postage prepaid. Complainant served copies of this *affidavit* and this *praecipe* by mail upon the Governor and the Attorney General of Virginia.

15. a. On September 30, 1994, further dismayed by the unilateral action of the Court in the September 16, 1994, *order*, Complainant filed with the federal district court his *Complainant's Second Motion For Review of Single-Judge's Action by Three-Judge District Court*, dated September 30, 1994.

b. Complainant noticed this motion for hearing by *praecipe*, dated September 30, 1994, noticing hearing on the motion for October 7, 1994, at 10:00 A.M. Complainant served copies of this motion and this *praecipe* by mail upon the Governor and the Attorney General of Virginia.

16. On October 6, 1994, one day prior to the noticed October 7th hearing of the *motion* for review of single-judge's action, the Court entered *order*, captioned wrongfully *"Breedlove v. Phillips, et al.,* ' for the Complainant to *show cause* why the action should not be dismissed for no service having been made within 120 days upon defendants, pursuant to F. R. Civ. P. 4(m).[29] The Court mailed a copy of this October 6, 1994, *order* to Complainant on October 7, 1994, with the copy of the Court's October 7, 1994, *order* discussed below.[30]

17. a. On October 7, 1994, Complainant was prevented from arguing his motions orally in open court by the Court failing to call Complainant's case, even though the Complainant's case was docketed (although captioned wrongfully as " *Breedlove v. Hart, et al.*") and even though the Complainant was present in the courtroom, had identified

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[29] No F. R. Civ. P. 4 (m) exists in the current bound volume of the *Federal Rules of Civil Procedure*, or in its 1993 or 1994 cumulative supplements.

[30] See copy of the Court's October 6, 1994, *show cause order*, as Appendix Exhibit 19, at page A41.

himself to the docket-control clerk and had indicated his intention to argue his motion.[31]

b. On the Court's October 7, 1994, civil docket, the instant *ex parte* action was captioned wrongfully by the office of the clerk of the court, as " *Breedlove v. Hart, et al.*" [32]

18. On October 7, 1994, the Court entered *order*, captioned wrongfully " *Breedlove v. Phillips, et al.*," without opportunity for Complainant to be heard in oral argument, denying *Complainant's Second Motion For Review of Single-Judge's Action by Three-Judge District Court*, dated September 30, 1994.[33] This October 7, 1994, *order* was signed by a single judge—Judge Bryan.

19. a. On October 26, 1994, Complainant filed *Complainant's Memorandum Responding to Show-Cause Order as to Why Ex Parte Action Should Not Be Dismissed and Supporting Motion for Summary Judgment*, dated October 26, 1994. The Complainant argued in his *memorandum*, with multiple citations of legal authority:

(1) that participation by adverse parties in the instant *ex parte* action would prejudice Complainant's appeals then pending, by exposing Complainant's legal theories to the scrutiny of these adverse parties, as held in *United States v. Merriwether, supra*;

(2) that Complainant's constitutional rights exist without regard to those rights' effect upon any adverse parties; and

(3) that Complainant is entitled to *ex parte* declaration of the constitutionality of the laws and judicial customs to which he has been subjected in actual controversy, as supported by the holding of the Supreme Court in *Ex Parte PORESKY, supra*, that Mr. Poresky was entitled to have a declaration of the constitutionality of the Massachusetts mandatory auto insurance law, even though the Governor and Attorney Gereral, and other

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[31] A copy of Complainant's *affidavit*, dated October 7, 1994, concerning non-hearing of the motion noticed for October 7, 1994, was presented in the *Brief for the Appellant*, as Appendix Exhibit 22 at page A-78, thereof.

[32] See copy of the Court's October 7, 1994, civil docket, internal page 8, eighth case, as Appendix Exhibit 20, at page A42.

[33] See copy of the Court's October 7, 1994, *order*, as Appendix Exhibit 21, at page A43.

officials of Massachusetts were not required as parties defendant, and these officials were dismissed as defendants—for being joined improperly—prior to Mr. Poresky being granted hearing on the merits and a declaration that the questioned law was constitutional.

20. a. Also on October 26, 1994, Complainant filed *Complainant's Motion for Summary Judgment*, dated October 26, 1994, to seek a determination of the instant *ex parte* action on the merits, Complainant having filed his *affidavit* on September 16, 1994, verifying the June 23, 1994, *Complaint* in its entirety, so there were no material facts in dispute.

b. Complainant noticed this *summary judgment motion* and Complainant's October 26, 1994, *memorandum*, for hearing by *praecipe*, dated October 26, 1994, noticing hearing on the *motion* and *memorandum* for November 18, 1994, at 10:00 A.M. Complainant served copies of this motion and this *praecipe* by mail upon the Governor and the Attorney General of Virginia.

21. a. On November 17, 1994, in light of the four *orders* entered by the Court against the Complainant, exercising the Court's *in personam* jurisdiction, Complainant filed *Complainant's Motion to Confirm the Court's Jurisdiction in the Instant Action*, dated November 17, 1994.

b. Complainant noticed this motion for hearing by *praecipe*, dated November 17, 1994, noticing hearing on the motion for November 18, 1994, at 10:00 A.M. Complainant served copies of this motion and this *praecipe* by mail upon the Governor and the Attorney General of Virginia.

22. a. In that Complainant had twice pointed out to the court in two written pleadings that he had been precluded by the court from arguing orally before motions were denied, Complainant was allowed to speak briefly before the court in support of his *memorandum* in response to the court's *show-cause order*. In his approximately 10-minute statement, Complainant objected to the calling of the case by wrongful caption, stating that the case was properly styled *Ex Parte Breedlove*. Complainant was repeatedly interrupted and cut off by the judge during Complainant's brief opportunity to speak. Complainant was not permitted to argue orally his motion for

the court to confirm its jurisdiction. Complainant was not permitted by the judge to argue orally his *motion for summary judgment*. Reading the transcript (four and and a half double-spaced pages of oral proceedings) of this hearing demonstrates the arbitrary and capricious conduct by the judge to a *pro se* complainant who was knowledgeable of the applicable law, prepared, and polite.

b. On the Court's November 18, 1994, civil docket, the instant *ex parte* action is miscaptioned as ***Breedlove v. Hart, et al.***[34]

23. a. On November 18, 1994, the Court entered *order*, miscaptioned ***Breedlove v. Phillips, et al.***,

(1) dismissing the instant *ex parte* action, in its entirety, and not merely as to the Commonwealth of Virginia, stating in part:

> "This action is dismissed without prejudice pursuant to Fed. R. Civ. P. 4 (m).[35] The court finds that plaintiff has not shown cause to excuse the failure to properly serve the representatives of the State of Virginia. Rather than explain the failure to serve the defendants, plaintiff persists in his position that this is an *ex parte* proceeding by which plaintiff means he need not serve any representative of the State of Virginia and that the court should on his unopposed motion declare certain Virginia acts unconstitutional."

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[34] See copy of the Court's November 18, 1994, civil docket, page unnumbered, third case, as Appendix Exhibit 22, at page A44.

[35] Complainant had brought the fact that there is no F. R. Civ. P. 4 (m) in the current bound volume of the *Federal Rules of Civil Procedure*, or in the 1993 cumulative supplement thereto to the Court's attention in his (1) *Complainant's Motion to Determine Any Necessary Service Requirements*, dated **August 4, 1994**, in which Complainant provided a xerographic copy of F. R. Civ. P. 4, in its entirety, showing only subparagraphs 4(a) – 4(j), from the bound volume of the *Federal Rules of Civil Procedure*, and of the additions (case notes) to F. R. Civ. P. 4 found in the bound volume's accompanying 1993 cumulative supplement; (2) *Complainant's Motionfor Review of Single Judge's Action by Three-Judge Court*, dated **September 12, 1994**; and (3) *Complainant's Memorandum Responding to Show-Cause Order as to Why Ex Parte Action Should Not Be Dismissed and Supporting Motion for Summary Judgment*, dated **October 26, 1994**.

Despite the fact of F. R. Civ. P. 4 (m)'s nonexistence and Complainant's attempts to bring that fact to the Court's attention three times, the Court continued to use this improper reference to the Rules and dismissed the Complaint under **nonexistent** F. R. Civ. P. 4 (m).

(2) denying *Complainant's Motion For Summary Judgment*, dated October 26, 1994.

24. The court entered an *order*, dated November 18, 1994: (1) dismissing the instant action pursuant to F. R. Civ. P. 4(m)[36] for the Complainant failing to serve the representatives of the State of Virginia; and (2) in light of the dismissal of the action by the court, denying the Complainant's noticed *motion for summary judgment*.[37] The court entered this November 18, 1994 dismissal *order* in the instant *ex parte* action, captioned wrongfully as " *Breedlove v. Phillips, et al.*," thus maintaining the misrepresentation of the instant *ex parte* action as a *bi partes* suit to a casual observer. The Complainant had sought no relief in his pleadings in this instant *ex parte* action against Phillips, *et al.*, or against Hart, *et al.* The miscaptioned order was signed by a single judge—Judge Bryan. There are no findings contained in the *order* by the single judge, acting for the Court, either that the constitutional questions raised in the *Complaint* are insubstantial, or that the Complaint fails to allege formally basis for equitable relief.[38]

25. Also on November 18, 1994, by separate *order*, captioned wrongfully *"Breedlove v. Phillips, et al.,"* the Court denied *Complainant's Motion to Confirm the Court's Jurisdiction in the Instant Action*, dated November 17, 1994, as moot. This *order* was the sixth exercise of the Court's *in personam* jurisdiction against the Complainant.

26. On December 16, 1994, Complainant filed his *Notice of Appeal*, dated December 16, 1994, timely, within 30 days after entry of final judgment on November 18, 1994.

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[36] Complainant, as a *pro se* litigant, had brought to the Court's attention three times, in two motions dated August 4, 1994, and September 12, 1994, and one memorandum of law dated October 26, 1994, the fact that there is no F. R. Civ. P. 4 (m) in the current bound volume of the *Federal Rules of Civil Procedure*, or in the 1993 cumulative supplement thereto, and sought clarification as to where Complainant could read F. R. Civ. P. 4 (m). The Court had threatened to dismiss the action under **nonexistent** F. R. Civ. P. 4 (m) continuously since the judge's letter of July 14, 1994.

[37] See copy of the Court's November 18, 1994, *order*, at Appendix Exhibit 23, at pages A45 – A46.

[38] "When application for statutory three-judge court is addressed to district court, its inquiry is limited to determine whether constitutional question raised is substantial, whether complaint at least formally alleges basis for equitable relief, and if these criteria are met, it is impermissible for single judge to decide merits of the case, either by granting or by withholding relief." [*Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 8 L.Ed.2d 794, 82 S.Ct. 1294 (1962).]

Complainant served copies of this *Notice of Appeal* by mail upon the Governor and the Attorney General of Virginia.

27. On December 22, 1994, Plaintiff filed his *transcript order* with the District Court, within 10 days of the *notice of appeal.*

28. On December 28, 1994, Plaintiff filed his *docketing statement* via first-class, certified mail, postage prepaid, return receipt requested, with the federal court of appeals for the Fourth Circuit, within 14 days of the *notice of appeal.*

29. On January 11, 1994, the clerk of the federal district court transmitted a four-page summary of the record (marked "docket as of January 11, 1995 10:06 am"), with a transmittal form, to the federal court of appeals for the Fourth Circuit, captioned wrongfully " *Breedlove v. Hart and Phillips.*" The clerk of the district court did not forward a copy of the four-page, January 11, 1995, docket summary concurrently to Complainant, but did forward only the transmittal form (form 4CCA-30, rev. 9/11/90) to Complainant with the caption block and the district court number block both blank. Thus, the federal district court concealed the wrongful caption from the Petitioner.

30. On January 27, 1995, by telephoning the Fourth Circuit Court and speaking with Ms. Sharon Wiley, case manager, Complainant learned of the existence of the discrepancy in the nomenclature on the January 11, 1995, transmittal form, as compared with the copy Complainant had received from the federal district court. Ms. Wiley obliged Complainant by sending a copy of the Court's file copy of the January 11, 1995, transmittal form to Complainant by first-class mail, postmarked January 27, 1995. This transmittal form from the Fourth Circuit court's records, date-stamped into the appeals court's records January 13, 1995, at 10:58 AM. shows the two blocks filled in as " *Kendall H. Breedlove v. Hart and Phillips,* " and "94-848-A," which were blank on Complainant's copy from the federal district court.

31. a. On February 8, 1995, Complainant telephoned the Fourth Circuit Court to learn if the Court had received all of the record from the federal district court (the federal court of appeals had not). Complainant told Ms. Debbie Daniel, a clerk

at the Court of Appeals, that Complainant had received no copy of the record from the federal district court. Ms. Daniel informed Complainant that the federal district court had filed part of the record on January 11, 1995, and obliged the Complainant with an offer to provide Complainant with a copy of the Court's file copy of the four-page January 11, 1995, docket summary. This copy was mailed to Complainant from the Fourth Circuit Court, by first-class mail, postmarked February 8, 1995.

b. A significant entry in this January 11, 1995, docket summary is that entry dated 12/16/94, which states that copies of the notice of appeal, docket entries, order of 11/18/94, and transmittal, were sent to the Complainant, to James R. Hart, to Calvin W. Phillips, and to the Circuit Court of Appeals. To the best of Complainant's knowledge, the federal district court did not have an address either for Hart or Phillips, or knowledge of whether they were represented by counsel or who their counsels were, if any, or any address for their counsels. Certainly none had entered any appearance in the instant *ex parte* action. The federal district court did not ask Complainant for that information and Complainant states that he did not provide that information to the court.

32. Also on February 8, 1994, the clerk's office of the federal district court put into the mail a copy of a four-page docket summary (marked "docket as of February 8, 1995 11:02 am"), and headed "APPEAL CLOSED." This Febraury 8, 1995, docket summary is captioned wrongfully " *Breedlove v. Hart, et al.*" In this February 8, 1995, docket summary, the entry dated 2/8/95, states that copy of docket entries and transmittal was sent to "parties," implying more than solely to Complainant.

33. Complainant asserts that the docketing summaries provided by the federal district court are erroneous, falsified, tampered, and do not present either a fair or accurate representation of the actual record. Complainant requested the federal court of appeals to disregard the falsified, tampered docketing summaries totally and to base its decision solely upon the actual documents filed of record with the federal district court.

Exhibit 14 July 12, 1994 letter from Virginia attorney general

COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

July 12, 1994

Doris R. Casey, Clerk
United States District Court for the
Eastern District of Virginia
U.S. Courthouse
200 South Washington Street
Alexandria, VA 22313

Re: Kendall H. Breedlove v. James R. Hart, et al.
C.A. No. 94-848-A

Dear Ms. Casey:

Plaintiff[39] Kendall Breedlove has named two private citizens as defendants in the above suit alleging they filed "false, unlawful mechanics liens" against his property. Among other things, he claims that the Virginia mechanics' lien statutes are unconstitutional. He has not named the Commonwealth or any state official as a defendant, however.

Breedlove mailed a copy of his complaint to this office. I understand he has refused to seek or to allow any summons to be issued, and that none of the named defendants have been served. I don't intend to file anything in this case on behalf of the Commonwealth to address the purported constitutional issue unless directed to do so by the Court. I wil appreciate if you would let me know in writing in the event the Court desires a response from the Commonwealth, or otherwise takes some action to dispose of this matter.

Thank you for your attention. With kindest regards, I am

Sincerely,
(signed) Greg E. Lucyk
Gregory E. Lucyk
Senior Assistant Attorney General

[39] Note that Mr. Lucyk referred to Complainant Breedlove as "plaintiff," and has referred to the instant *ex parte* action as though it was a *bi partes* suit.

Exhibit 15 July 14, 1994 letter to Virginia

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA, VIRGINIA 22320-2449

CHAMBERS OF
ALBERT V. BRYAN, JR.
SENIOR DISTRICT JUDGE

July 14th, 1994

Gregory E. Lucyk, Esquire
Senior Assistant Attorney General
Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219

Re: Breedlove v. Hart, et al.
Civil Action No. 94-848-A[40]

Dear Mr. Lucyk:

Your letter of July 12, 1994, to the clerk has been referred to me for reply. Mailing a copy of the complaint, of course, is not sufficient service unless service is accepted by a defendant. Unless he effects proper service within 120 days from the filing of his complaint, it will be dismissed pursuant to F. R. Civ. P. 4(m).[41]

Very truly yours,

(signed) Albert V. Bryan, Jr.
Albert V. Bryan, Jr.

cc: Mr. Kendall H. Breedlove

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[40] Note that the judge has underlined the civil action number, rather than adhering to the common procedure of underlining the caption of the action.

[41] There is no F. R. Civ. P. 4 (m) in the current bound volume of the *Federal Rules of Civil Procedure*, or in the 1993 or 1994 cumulative supplements thereto, which fact Complainant brought to the judge's attention in Complainant's August 4, 1994, motion and in two other, subsequent pleadings.

Exhibit 16 September 7, 1994 order denying declaration of service requirements

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

KENDALL H. BREEDLOVE,	)	
	)	
Plaintiff,	)	
V.	)	CIVIL ACTION
	)	NO. 94-848-A
CALVIN W. PHILLIPS, *et al.*[42]	)	
	)	
Defendants.	)	

ORDER

Upon consideration of the plaintiff's[43] Motion to Determine Any Necessary Service Requirements, and the court still being unwilling to consider an ex parte action absent proper service, it is hereby

ORDERED that the motion is denied.

Albert V. Bryan, Jr.
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
September 7th, 1994

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[42] Throughout the instant action, *Ex Parte* BREEDLOVE, the trial court persisted in captioning wrongfully the docket entries as "*Breedlove v. Hart, et al.*," and in captioning wrongfully the orders as "*Breedlove v. Phillips, et al.*"

[43] Note that the court referred to Complainant Breedlove as "plaintiff," and has styled this order as though it was entered in a *bi partes* suit.

Exhibit 17 Excerpt from the District Court's September 16, 1994, Civil Docket[44]

CIVIL DOCKET CONTINUED

SEPTEMBER 16, 1994

10:00 A.M.:

Jones	C/A 94-584-A	SHEET METAL WORKERS NATIONAL PENSION, et al. v. RHODES HEATING & ROOFING CO. (Pltfs.' motion for default judgment; Motion that facts be taken as established)	Jill Baskin John Iossi
Perota	C/A 93-1094-A	MICHAEL BENKO v. RICHARD JOSEPH LAPOINTE, et al. (Defts.' motion to stay proceeding to enforce judgment) (Pltf.'s motion to strike defts' motion to stay)	Dana Carlson Pamela Pearson
Cacheris	C/A 83-205-A	DOUGLAS N. STUP v. WILLIAM F. BOLGER (Status Conference)	Paula Potoczak Lynn Poole RichardParker
Bryan	C/A 94-848-A	KENDALL H. BREEDLOVE v. JAMES R. HART, et al. (Pltf.'s motion for review of single judge's action by three judge court; Motion for written published self contained memo. opinion of the court's findings, rulings and decision)	Kendall Breedlove
Jones	C/A 94-790-A	NATHANIEL BROWN, et al. v. ORTHO DIAGNOSTIC SYSTEMS, INC. (Pltf.'s motion to compel discovery) (Defts.'s motion to compel; Motion for protective order)	Nathaniel Brown Nannette Brown Thomas Schaufelber
Jones	C/A 94-569-A	ELIZABETH A. CLAYDON v. NATIONAL TRADE PRODUCTIONS, INC. (Defts.'s motion to extend time for discovery cutoff; motion for leave to take more than five depositions)	Frank Aschenn William Miller
Brinkema	C/A 94-1077-A	REBECCA GILLESPIE, et al. v. TEOFILO YUBAT, M.D. (Defts.'s motion to transfer) (Pltf.'s motion to amend complaint)	James Kimble Gary Godard
Jones	C/a 94-611-A	BETTY G. COX v. LILLIE RUBIN AFFILIATES, INC. (Pltf.'s motion to compel; Motion to supplement trial exhibits and witness list; Motion for leave to take additional depositions)	Elaine Bredehoft Rodney Glover

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[44] Complainant's *praecipe*, dated September 12, 1994, noticing the two motions for hearing on September 16, 1994, was captioned "*Ex Parte* KENDALL H. BREEDLOVE."

Exhibit 18 September 16, 1994 order denying review by three-judge court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

KENDALL H. BREEDLOVE, Plaintiff,	)	
v.	)	CIVIL ACTION
	)	NO. 94-848-A
CALVIN W. PHILLIPS, *et al.*[45] Defendants.	)	

ORDER

Persisting in his efforts to have an adjudication of his claim without service upon any party, the plaintiff[46] has now filed Complainant's Motion For Review of Single Judge's Action by Three-Judge Court and Complainant's Motion for Written, Published, Self-Contained Memorandum Opinion of the Court's Findings, Rulings and Decision.

Upon consideration thereof it is hereby:

ORDERED that:

1. Plaintiff's motion for review is denied.

To the extent that the reference to a three- judge court refers to a United States Appellate Court, the plaintiff is free to apply to that court for a review of any action of the district court.

2. Plaintiff's motion For a memorandum opinion is also denied.

Albert V. Bryan, Jr.
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
September 16, 1994

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[45] Throughout the instant action, *Ex Parte* BREEDLOVE, the trial court persisted in captioning wrongfully the docket entries as "*Breedlove v. Hart, et al.*," and in captioning wrongfully the orders as "*Breedlove v. Phillips, et al.*"

[46] Note that the court referred to Complainant Breedlove as "plaintiff," and has styled this order as though it was entered in a *bi partes* suit.

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Exhibit 19 October 6, 1994 show-cause order

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

KENDALL H. BREEDLOVE, Plaintiff,	)	
v.	)	CIVIL ACTION NO. 94-848-A
CALVIN W. PHILLIPS, *et al.*[47] Defendants.	)	

ORDER

It appearing that more than 120 days have elapsed since the filing of the complaint and no service has been effected upon the defendants,[48] it is hereby

ORDERED that the plaintiff[49] shall show cause, if any he can, within twenty (20) days of this date, why the action should not be dismissed without prejudice pursuant to F. R. Civ. P. 4(m).[50]

Albert V. Bryan, Jr.
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
October 6th, 1994

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[47] Throughout the instant action, *Ex Parte BREEDLOVE*, the trial court persisted in captioning wrongfully the docket entries as "*Breedlove v. Hart, et al.*," and in captioning wrongfully the orders as "*Breedlove v. Phillips, et al.*"

[48] The Court's entry of this *show-cause order*, captioned wrongfully as "*Breedlove v. Phillips, et al.*," implies: (1) that Phillips, *et al.*, are named, or declared, or joined defendants in the instant *ex parte action* (which they are not); (2) that Complainant had an obligation to serve process upon Phillips, *et al.*, as defendants in the instant *ex parte* action (there being no such implied obligation, Phillips, *et al.*, being neither named, nor declared, nor joined defendants); and (3) that Complainant failed to discharge the implied obligation to serve Phillips, *et al.*

[49] Note that the court referred to Complainant Breedlove as "plaintiff," and has styled this order as though it was entered in a *bi partes* suit.

[50] No F. R. Civ. P. 4 (m) exists in the current bound volume of the *Federal Rules of Civil Procedure*, or in its 1993 or 1994 cumulative supplements.

Exhibit 20 Excerpt from the District Court's October 7, 1994, Civil Docket[51]

CIVIL DOCKET CONTINUED

OCTOBER 7, 1994

10:00 A.M.:

Hilton	C/A 94-585-A	RTC, et al. v. THOMAS F. DALY, et al. (Defts.' motion for reconsideration of 9/19/94 order and for stay) Defts.' motion for continuance of pltf.'s motion for summary judgment)	Susan Voss Alan Anderson
Sewell	C/A 94-943-A	TONY ANDREW FORD, SR. v. DONNA SHALALA, SEC. OF HEALTH & HUMAN SERVICES (Defts.'s motion to extend time to answer)	Tony Ford, Sr. Rachel Ballow
Cacheris	C/A 94-1286-A	MATOS, JR, et al. v. NATIONAL PROTECTIVE SERVICES, INC. (Pltfs.' motion for emergency injunction)	Sydney Rab
Brinkema	C/A 94-611-A	BETTY G. COX v. LILLIE RUBIN AFFILIATES, INC. (Pltf.'s objections to Magistrate's order of 9/16/94) (Pltf.'s motion for sanctions)	Elaine Bredehoft Rodney Glover
Jones	C/A 94-176-A	FEDERAL FINANCIAL CO. v. PETER FITZGERALD, et al. (Defts.' motion to stay pending appeal)	Jeffrey Bloom Stevan Davidson
Sewell	C/A 94-481-A	ALFRED W. BREINER, et al. v. USA (Deft.'s motion to compel) (Pltfs.' motion to quash subpoenas; Motion to compel discovery)	Theodore Breiner Richard Parker
Hilton	C/A 94-1267-A	SAMSUNG ELECTRONICS CO. ltd. v. RICOH CORPORATION, et al. (Deft. Ricoh Corporation's motion to change venue)	Thomas Scott Raphael Lupo
Bryan	C/A 94-848-A	KENDALL H. BREEDLOVE v. JAMES R. HART, et al. (Pltf.'s motion for review of single judge's action by three judge district court)	Kendall Breedlove

A True Copy Teste:
Clerk

-8-

[51] Complainant's *praecipe*, dated September 30, 1994, noticing the motion for hearing on October 7, 1994, was captioned "*Ex Parte* KENDALL H. BREEDLOVE."

Exhibit 21 October 7, 1994 order denying review of single-judge's acts by three-judge court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

KENDALL H. BREEDLOVE, Plaintiff,	)	
V.	)	CIVIL ACTION
	)	NO. 94-848
CALVIN W. PHILLIPS, *et al.*[52] Defendants.	)	

ORDER

Upon consideration of the plaintiff's[53] second motion for review of single-judge's action by three-judge district court, it is hereby

ORDERED that:

The motion for review is denied. The only issue raised by the plaintiff which he did not raise in his two prior motions, dated September 12, 1994 and denied by this court on September 16, 1994, is a due process challenge to this court's disposal of those motions without notice and without oral hearing. These claims are without merit. The plaintiff is surely on notice that his own motions, once filed, will be decided by the court. Furthermore, in accordance with F. R. Civ. P. 78, the court may rule upon motions without an oral hearing. E. D. Va. R. 11 (K).

Albert V. Bryan, Jr.
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
October 7, 1994

[52] Throughout the instant action, *Ex Parte* BREEDLOVE, the trial court persisted in captioning wrongfully the docket entries as *Breedlove v. Hart, et al.*, and in captioning wrongfully the orders as *Breedlove v. Phillips, et al.*

[53] Note that the court referred to Complainant Breedlove as "plaintiff," and has styled this order as though it was entered in a *bi partes* suit.

Exhibit 22 Excerpt from the District Court's November 18, 1994, Civil Docket[54]

CIVIL DOCKET CONTINUED

NOVEMBER 18, 1994

10:00 A.M.:

Brinkema	C/A 94-777-A	INTEGRATED LOGISTIC SUPPORT SYSTEMS INTERNATIONAL, INC. v. NAVAL AIR SYSTEMS COMMAND, et al. (Defts.' motion for summary judgment) (Pltf.'s cross motion for summary judgment)	Michael Goodstein Margaret Smith
Poretz	C/A 94-828-A	JESSE E. MARTIN v. TOGO D. WEST (Deft.'s motion to dismiss)	Jesse Martin Rachel Ballow
Bryan	C/A 94-848-A	KENDALL H. BREEDLOVE v. JAMES R. HART, et al. (Show Cause) (Pltf.'s motion for summary judgment)	Kendall Breedlove
Cacheris	C/A 94-907-A	DAVID L. SHURTZ, et al. v. BARRY A. GOLDBERG, et al. (Defts. Antonio La Rosa and Grand Prix Auto Sale's motion to dismiss the cross claim)	David Shurtz Craig Reilly Stephen Luxford Joe Esposito Michael Scott Thomas Foltz
Ellis	C/A 94-1028-A	TELEPAD CORPORATION v. N. CALEB AVERY (Pltf.'s motion to dismiss counterclaim or in the alternative for summary judgment)	John McDermott Naig Kalbian
Brinkema	C/A 94-1045-A	AMERICAN BIO-SAFE FLUIDS, LLC v. ABBOTT LABORATORIES, et al. (Deft. Fresenius AG's motion to dismiss first amended complaint or in the alternative to quash service of process)	Paul Kennedy James Myers John Pasiorb Henry FitzGerald
Poretz	C/A 94-1081-A	THE STATE OF QATAR, et al. v. FIRST AMERICAN BANK OF VA., et al. (Pltfs.' motion to amend complaint)	Dorothy Fountain Grady Frank, JR. Daniel Fiore Robert Richardson
Hilton	C/A 94-1110-A	WESTSCOT LIMITED PARTNERSHIP v. MAYATECH CORP., et al. (Third party deft. USA's motion to dismiss)	John Martin Theresa Cummins Theresa Buchanan

A True Copy, Teste:
Doris R. Casey, Clerk
By: _____
Deputy Clerk

[54] Complainant's *praecipe*, dated September 30, 1994, noticing the motion for hearing on October 7, 1994, was captioned "*Ex Parte* KENDALL H. BREEDLOVE."

Exhibit 23 November 18, 1994 order memorializing trial court ruling on show cause

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

KENDALL H. BREEDLOVE, Plaintiff,	)	
V.	)	CIVIL ACTION
	)	NO. 94-848-A
CALVIN W. PHILLIPS, *et al.*[55] Defendants.	)	

ORDER

This action comes before the court on the court's October 6, 1994 order to plaintiff[56] to show cause why the action should not be dismissed for failure to properly serve the defendants.[57] Also, in this self-styled *ex parte* action, plaintiff has moved for summary judgment to have certain Virginia legislative acts declared unconstitutional.

Upon consideration thereof, it is hereby

ORDERED that:

1. This action is dismissed without prejudice pursuant to Fed. R. Civ. P. 4 (m).[58] The court finds that plaintiff has not shown cause to excuse the failure to properly serve the representatives of the State of Virginia. Rather than explain the failure to serve the defendants, plaintiff persists in his position that this is an *ex parte* proceeding by which plaintiff means he need not serve any representative of the State of Virginia and

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[55] Throughout the instant action, *Ex Parte BREEDLOVE*, the trial court persisted in captioning wrongfully the docket entries as "*Breedlove v. Hart, et al.*," and in captioning wrongfully the orders as "*Breedlove v. Phillips, et al.*"

[56] Note that the court referred to Complainant Breedlove as "plaintiff," and has styled this order as though it was entered in a *bi partes* suit.

[57] In the October 6, 1994, *show-cause order*, captioned wrongfully "*Breedlove v. Phillips, et al.*," the reference to "the defendants" implies Phillips, *et al.*, the defendants in the underlying *ex relatu* suit. Virginia was not a party to the underlying *ex relatu* suit, *Breedlove v. Phillips, et al.*

[58] No F. R. Civ. P. 4 (m) exists in the current bound volume of the *Federal Rules of Civil Procedure*, or in its 1993 or 1994 cumulative supplements.

that the court should on his unopposed motion declare certain Virginia acts unconstitutional.[59]

2. Plaintiff's motion for summary judgment is denied in light of the dismissal of the action.

Albert V. Bryan, Jr.
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
November 18th, 1994

[59] The Court ignored its duty to certify the constitutional challenge and to notify the Governor of Virginia and the Attorney General of Virginia, pursuant to 28 USC §2403 (b), which imposes a mandatory duty upon the Court.

***Exhibit 24 November 18, 1994 order memorializing trial court ruling on* Complainant's motion to confirm the court's jurisdiction**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

KENDALL H. BREEDLOVE, Plaintiff,	)	
V.	)	CIVIL ACTION
	)	NO. 94-848-A
CALVIN W. PHILLIPS, *et al.*[60] Defendants.	)	

ORDER

In light of the court's dismissal of this action pursuant to Fed. R. Civ. P. 4 (m)[61] it is hereby

ORDERED that:

Plaintiff's[62] motion to confirm the court's jurisdiction is dismissed as moot.

Albert V. Bryan, Jr.
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
November 18, 1994

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[60] Throughout the instant action, *Ex Parte* BREEDLOVE, the trial court persisted in captioning wrongfully the docket entries as "*Breedlove v. Hart, et al.*," and in captioning wrongfully the orders as "*Breedlove v. Phillips, et al.*"

[61] No Fed. R. Civ. P. 4 (m) exists in the current bound volume of the *Federal Rules of Civil Procedure*, or in its 1993 or 1994 cumulative supplements.

[62] Note that the court referred to Complainant Breedlove as "plaintiff," and has styled this order as though it was entered in a *bi partes* suit

Exhibit 25 Details of Circumstances Creating No Route of Redress of Damages Attributable to False, Fraudulent, Forged, Perjured Virginia Mechanics' Liens

In the two *ex relatu* cases taken together, lower Virginia state court decisions and subsequent denials of *certiorari* have created a set of circumstances in which a lienee/property owner, who is damaged as a result of false, fraudulent, forged, perjured Virginia mechanics' liens, which have been adjudged to be "are and were invalid," has no route of redress for his damages, contrary to the common-law principle: for every injury, there is a remedy.

As to the created circumstance—

1. In *Breedlove v. Phillips, et al.*, the Virginia state trial and supreme courts held, in their unpublished decisions, that a damaged mechanics' lienee/property owner may not sue for redress through causes of action for common-law defamation, statutory defamation, or slander of title.

2. In *Breedlove v. Hart, et al.*, the Virginia state trial and supreme courts held, in their unpublished decisions, that a damaged mechanics' lienee/property owner may not sue for redress through causes of action for malicious prosecution, abuse of process, or civil conspiracy.

3. Thus, the circumstance is created in which a damaged mechanics' lienee/property owner has no route of redress for his damages in Virginia. This circumstance violates the common-law principle that for every injury there is a remedy.

As to the constitutional effects—

4. The circumstance created by the decisions in the *ex relatu* cases demonstrates that postdeprivation remedies for the Virginia mechanics' lien law are inadequate. A single plaintiff, the Petitioner, has now demonstrated that there is *no* route for redress of damages at common law in Virginia for one damaged by mechanics' liens.

5. The Virginia mechanics' lien law fails to provide adequate predeprivation safeguards—neither due process, nor immediate postdeprivation hearing, nor lienor protective bond—and exigent circumstances are inapplicable to defer a predeprivational hearing.

6. The three false, fraudulent, forged, perjured mechanics' liens took a significant property interest from the Petitioner, seizing and holding the two liened properties in *custodia legis* for 17 months and 11 months, respectively. The three false, fraudulent, forged, perjured mechanics' liens also invaded a significant liberty interest of the lienee—the Petitioner's right to his good name and creditworthiness—which became actionable when coupled with deprivation of freedom of occupation as a real estate investor, as in the instant action and the underlying *ex relatu* cases.

7. The interest of the party seeking the prejudgment remedy—the mechanics' lien—is not more weighty that the constitutional rights of the lienee/property owner.

8. The procedural scheme of the Virginia mechanics' lien law is materially at variance with the constitutional procedural practices set forth in *Connectivut v. Doehr, supra*, and fails to comport with constitutional due process.

9. The associated Virginia judicial procedures—the English rule and its implementation—set forth in *Ayyildiz, M.D. v. Kidd, supra*, serve only to render the Virginia postdeprivation remedies even less adequate, than they were prior to the 1980 *Ayyildiz* decision, by barring redress in the application of the Virginia procedural scheme for the creation and enforcement of mechanics' liens.

10. By applying the *Doehr*-version, three-part *Mathews* test for private-party-initiated deprivations, the U.S. Supreme Court may reach the conclusion that the Virginia mechanics' lien law is and was unconstitutional. Likewise, the U.S. Supreme Court may reach the conclusion that the associated Virginia judicial procedures are and were unconstitutional.

Exhibit 26 Details of the Fourth Circuit Court's Improper Affirmance and Lack of Jurisdiction to Dismiss, re: 28 USC §2284 Duties

The following demonstrates the Fourth Circuit court of appeals' improper affirmance of the lower court's failure to discharge its jurisdictional 28 USC §2284 duties—

1. The Petitioner, as complainant, requested a three-judge district court pursuant to 28 USC §2284 in his *Complaint*, filed

June 23, 1994, and set forth therein substantial constitutional questions.[63] Complainant alleged the formal basis for injunctive relief sought in his *Complaint*. Complainant pleaded the applicability of 28 USC §2284 in his *Complaint*.

2. The Petitioner, as complainant, was *entitled* to the judicial procedure set forth in 28 USC §2284 (b) for the determination of the three-judge district court's jurisdiction, in that the Petitioner, as complainant, had alleged a three-judge matter and had requested a three-judge court in the *Complaint*.[64]

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[63] Petitioner, as complainant, requested a three-judge court formally in the June 23, 1994, *Complaint*, as follows:

" [*Count I*] 4. a. A three-judge court is requested for each count and subcount, in accordance with 28 USC §2284, as the instant action is a challenge to the constitutionality, *on their faces*, of the mechanics' lien statutes (*Virginia Code § 43-1* through *§ 43-23.2*) of the Commonwealth of Virginia and to the constitutionality of the Virginia judicial procedure for seeking redress for libelous, false, malicious mechanics' liens, arising under the decision of *Donohoe Constr. Co. v. Mount Vernon Assoc.*, 235 Va. 531, 369 S.E.2d 857 (1988) (hereinafter referred to as *Donohoe*).

" b. Complainant certifies that he has served a copy of this Complaint, in accordance with 28 USC §2284, both upon the Governor and upon the Attorney General of the Commonwealth of Virginia, by certified mail, postage prepaid, as of the date of filing this action." [*Complaint, June 23, 1994, Count I, paragraphs 4 a and b, at page 2.*]

" [*Count II*] 5. a. A three-judge court is requested, in accordance with 28 USC §2284, as the instant action is a challenge (1) to the constitutionality of the Virginia judicial procedure for satisfying the English rule, as set forth in *Ayyildiz, M.D. v. Kidd*, 220 Va. 1080, 266 S.E.2d 108 (1980), and its progeny (hereinafter referred to as *Ayyildiz*); (2) to the constitutionality of the Virginia judicial procedure for seeking redress for libelous, false, malicious mechanics' liens, arising under the decision of *Donohoe Constr. Co. v. Mount Vernon Assoc.*, 235 Va. 531, 369 S.E.2d 857 (1988) (hereinafter referred to as *Donohoe*); and (3) to the constitutionality of the mechanics' lien statutes, *Virginia Code § 43-1* through *§ 43-23.2*, of the Commonwealth of Virginia (hereinafter refered to as Virginia mechanics' lien law)." [*Complaint, June 23, 1994, Count II, paragraph 5 a, at page 44.*]

[64] The provisions of 28 USC §2284 (b) state:

"* * * (b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure for the court shall be as follows:

"(1) **Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge.** The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

"(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by

Failure by the federal district trial judge to adhere to the procedural requirements of 28 USC §2284 deprived Petitioner of his *entitlement* granted under federal statute, without procedural due process, by the court's failure to fulfill its statutory duty under 28 USC §2284 (b). By dismissing the instant *ex parte* action, the trial judge deprived Petitioner of his *entitlement* permanently.

3. Title 28 USC §2284 sets forth what a single judge must do upon being presented with a request for a three-judge court. Federal case law presented in the notes to 28 USCS §2284, has set forth the conditions when and under which the judge must call to his assistance two other judges, pursuant to 28 USC §2284.[65] The thread running through these cases is that a single district judge, presented with a request for a three-judge district court is: (a) to determine whether a substantial constitutional question is raised, (b) to determine whether the basis for equitable relief is pleaded formally in the complaint, and (c) to determine whether the case comes within the requirements of the three-judge statute. If these condidtions are met, the single judge *must* follow the procedures of 28 USC §2284, and convene a three-judge court. The single judge is not at liberty to dismiss the case.

4. The single trial judge, after receiving the *Complaint*, did not demonstrate that he followed the procedures of 28 USC §2284 and of its associated federal case law. The trial judge: (a) did not demonstrate that he made determination whether substantial constitutional question was raised in *Complaint*; (b) did not determine whether the basis for equitable relief was pleaded formally in the *Complaint*; and (c) did not determine

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registered of certified mail to the Governor and attorney general of the State.

"(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. * * * A ***single judge shall not*** appoint a master, or order a reference, or hear and determine any application for a preliminary of permanent injunction or motion to vacate such an injunction, or ***enter judgment on the merits.*** **Any action of a single judge may be reviewed by the full court at any time before final judgment.**" [*bold emphasis added by Appellant to 28 USC §2284.*]

[65] See selected cases from notes to 28 USCS §2284 as Appendix Exhibit 27, at pages A54 – A56.

whether the case came within the requirements of the three-judge statute.

5. More particularly, none of the six *orders*[66] entered in the instant *ex parte* action before the trial court state any finding or ruling by the Court to the effect that: (a) no substantial constitutional question is raised; (b) that no basis for equitable relief is pleaded formally; (c) that the case does not come within the requirements of the three-judge statute; or, (d) that the three-judge court is not appropriate.

6. In fact, two of the six motions denied by *order*[67] of the trial judge dealt with two separate requests for a three-judge court to review the actions of the single judge, and were denied by the same single judge. The actions of the trial judge in twice denying by *order* the Complainant's motion for review of a single-judge's actions by the three-judge court are in direct violation of 28 USC §2284 (b) (3) and contravene the holding of *Stout v. Hendricks.*[68]

7. Thus, without the entry by the trial judge of such jurisdictional findings and determinations, the trial judge was without authority to dismiss the instant *ex parte* action by his sole, single-judge action.

8. The federal district court failed to discharge its statutory duties under 28 USC §2284. The trial judge's failure to adhere to the judicial procedures of 28 USC §2284: (a) deprived Complainant of his *entitlement*, granted under federal statute, to the court's compliance with those procedures created under 28 USC §2284, and its associated federal case law, and did so without due process; and (b) denied procedural due process to the Complainant. In addition, the actions of the trial judge in

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[66] The six *orders* may be seen in the Appendix: September 7, 1994, Appendix Exhibit 16, at page A37; September 16, 1994, Appendix Exhibit 18, at page A39; October 6, 1994, Appendix Exhibit 19, at page A41; October 7, 1994, Appendix Exhibit 21, at page A43; November 18, 1994, Appendix Exhibit 23, at page A45; and November 18, 1994, Appendix Exhibit 24, at page A47.

[67] September 16, 1994, *order*, Appendix Exhibit 18, at page A39; October 7, 1994, *order*, Appendix Exhibit 21, at page A43.

[68] "28 USC §2284 provides that action of single judge shall be reviewable by full three-judge court at any time before final judgment." [*Stout v. Hendricks*, 235 F.Supp. 556 (S.D., Ind., 1964); cited in *28 USCS §2284*, note 22, "Review by three-judge court of single-judge acts," at page 317.]

denying the Complaint's two requests for review of a single-judge's actions by the three-judge court: (a) are contrary to 28 USC §2284(b)(3); (b) are denials of *entitlement* without due process; (c) are arbitrary and capricious; (d) constitute reversible error; and (e) demonstrate bias and actual malice against the Petitioner.

The following demonstrates the November 18, 1994, order, the June 19, 1995, opinion, and the August 4, 1995, order are void for lack of jurisdiction—

9. On its face, the November 18, 1994, *dismissal order* fails to set forth that the federal district court has performed its mandatory jurisdictional duties under 28 USC §2284 or made the jurisdictional determinations removing the instant action from the jurisdiction of a three-judge court. **See** copy of the November 18, 1994, *dismissal order* reproduced as Appendix Exhibit 23, at page A45.

10. The federal district court failed for five months to discharge its 28 USC §2284 duty, *sua sponte*.

11. On their faces, the June 19, 1995, *opinion* and August 10, 1995, *order* fail to set forth that the Fourth Circuit court of appeals has performed its mandatory jurisdictional duties under 28 USC §2284. **See** copies of the June 19, 1995, *opinion* and August 10, 1995, *order* reproduced as Appendix Exhibit 2 and 3, respectively, at pages A3-A5.

12. The Fourth Circuit court failed and refused for four months to discharge its mandatory 28 USC §2284 duties.

13. Drawing upon the principle that a single judge lacks jurisdiction to dismiss a three-judge matter, without making certain jurisdictional determinations, the Petitioner argues that both the trial judge and the circuit judges were without jurisdiction to dismiss either the instant action, or the instant appeal, or the *petition for rehearing*, without discharging the federal courts' mandatory duties under 28 USC §2284, which duties are not subject to judicial discretion by legal analogy to the holdings concerning 28 USC §2403 (b) jurisdictional

duties.[69] Petitioner asserts that his argument is supported by the holdings of law in *Wallach v. Lieberman* and *Merrill v. Addison*, quoted in footnote below.[70]

Exhibit 27 Selected cases regarding 28 USCS §2284

The following cases are found in the notes to 28 USCS §2284:

a. "Whenever petition to convene three-judge court pursuant to 28 USC §2284 is filed, original inquiry must be whether complaint complies with requirements for statute involved." [*Federacion de Cooperativas de Credito v. Burgos*, 366 F.Supp. 1321 (DC Puerto Rico, 1973).][71]

b. "When application for statutory three-judge court is addressed to district court, its inquiry is limited to determine whether constitutional question raised is substantial, whether complaint at least formally alleges basis for equitable relief, and if these criteria are met, it is impermissible for single judge to decide merits of the case, either by granting or by withholding relief." [*Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 8 L.Ed.2d 794, 82 S.Ct. 1294 (1962).][72]

c. "Single district judge, when faced with request to convene three-judge court, cannot resolve factual issues by use of summary judgment procedure in affidavits; he cannot delve deeper than phase of pleadings in reaching that determination." [*Dale v. Hahn*, 440 F.2d 633 (C.A.2, N.Y., 1971), 14 FR Serv 2d 1196, later app (C.A.2, N.Y.)

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[69] 28 USCS §2403, note 7, "Discretion," at page 454, discloses no holdings to the contrary.

[70] a. "Under 28 USCS §2403, it is required that a district court, even though it finds that a constitutional question is frivolous, give notice to the Attorney General, leaving to him the decision whether to intervene." [*Wallach v. Lieberman*, 366 F.2d 254, 10 FR Serv 2d 747, 2 ALR Fed 969 (C.A.2, N.Y., 1966), cited in 28 USCS §2403, note 7, "Discretion," at 454.]

b. "Certification under 28 USCS §2403(b) is duty of court that should not be ignored, even if claim is obviously frivolous or may be disposed of on other grounds." [*Merrill v. Addison*, 763 F. 2d 80 (C.A.2, N.Y., 1985), 28 USCS §2403, note 7, "Discretion," at 454.]

[71] *28 USCS §2284*, note 1, "Generally," at page 308.

[72] *Op. cit.*, note 9, "Initial screening of applications," at page 311.

486 F.2d 76, cert den 419 U.S. 826, 42 L.Ed.2d 50, 95 S.Ct. 44.][73]

d. "District Court's preliminary inquiry is limited to determining whether constitutional question raised is substantial, whether complaint at least formally alleges basis for equitable relief, and whether case otherwise comes within requirements of three-judge statute." [*Noe v. True*, 507 F.2d 9, 19 FR Serv 2d 646 (C.A.6, Ky., 1974).][74]

e. "District judge to whom application for three-judge is presented has authority to determine only jurisdictional questions, and may examine merits solely to determine whether substantial federal question is presented." [*Collins v. Bolton*, 287 F.Supp 393, 12 FR Serv 2d 442 (N.D., Ill., 1968.][75]

f. "Single judge to whom application is made to convene three-judge District Court under 28 USC §2284 is not at liberty to rule on merits of claim, if such claim presents substantial constitutional questions." [*Simkins v. Gressette*, 494 F.Supp. 1075 (D.C. S.C., 1980), affd 631 F.2d 287 (C.A.4, S.C).][76]

g. "Under former 28 USC §2284(5) [now § 2284(b)(3)], if in fact substantial constitutional question has been presented, single trial judge has no authority to dismiss case." [*Hartmann v. Scott*, 488 F.2d 1215 (C.A.8, Minn., 1973).][77]

h. "If court was warranted in taking jurisdiction and case fell within 28 USCS §2284, single judge was not authorized to dismiss complaint on merits, whatever his opinion of merits might have been." [*New Jersey Chiropractic Assoc. v. State Bd. of Medical Examiners*, 79 F.Supp. 327 (D.C., N.J., 1948).][78]

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[73] *Op. cit.*, note 9, page 311.
[74] *Op. cit.*, note 9, page 311.
[75] *Op. cit.*, note 9, page 312.
[76] *Op. cit.*, note 9, page 312.
[77] *Op. cit.*, note 10, "Dismissal of applications," at page 312.
[78] *Op. cit.*, note 10, page 313.

i. "There is no requirement in 28 USC §2284 that applicant for injunction must determine need for three-judge court and make request therefor; it was legislative intention that district judge to whom application for injunction is presented must determine whether it is three-judge case or single-judge matter and take necessary action under §2284." [*Aaron v. Cooper*, 261 F.2d 97 (C.A.8, Ark., 1959).][79]

j. "After request for three-judge court is made, and unless single judge determines that three-judge court is not appropriate, proper procedure is for three-judge court to determine whether claim has merit." [*Backus v. Spears*, 677 F.2d 397 (C.A.4, S.C., 1982).][80]

Exhibit 28 Details of the Fourth Circuit Court's Improper Affirmance and Lack of Jurisdiction to Dismiss, re: 28 USC §2403 (b) Duties

The following demonstrates the Fourth Circuit court of appeals' improper affirmance of the lower court's failure to discharge its jurisdictional 28 USC §2403 (b) duties, while the Fourth Circuit court, itself, failed to discharge its own 28 USC §2403 (b) duties—

1. Petitioner has not named the State of Virginia, or any officer or employee thereof, as a party to the instant action.

2. The *Complaint* of June 23, 1994, drew into question before the trial judge the constitutionality of a statute or statutes of Virginia affecting the public interest. Likewise, (a) the February 21, 1995, *Brief for the Appellant*, (b) the March 28, 1995, *Reply Brief for the Appellant*, and (c) the July 1, 1995, *Petition for Rehearing*, each drew into question before the Fourth Circuit court of appeals the constitutionality of a statute or statutes of Virginia affecting the public interest.

3. Thus, according to the prescription of 28 USC §2403 (b), the federal district court and the Fourth Circuit court of appeals "shall certify" to the Attorney General of Virginia the

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[79] *Op. cit.*, note 13, "Request for three-judge court [28 USC §2284(b)(1)]," at page 313.
[80] *Op. cit.*, note 13, page 314.

fact that one or more of Virginia's statutes has been challenged as to its constitutionality.

4. After the federal district court had failed, *sua sponte*, and refused to discharge its mandatory, statutory duty, to certify and to notify, pursuant to 28 USC §2403 (b), the Fourth Circuit court, *sua sponte*, discharged its mandatory, 28 USC §2403 (b) duty of notification, seven days after the date of the *Brief for the Appellant*, by the Clerk's letter dated February 28, 1995, forwarding a copy of the February 21, 1995, *Brief for the Appellant* to the Attorney General, and stating that it was done pursuant to 28 USC §2403 (b). For details of the Clerk's letter complying with 28 USC §2403 (b), *see* copy of the February 28, 1995, letter as Appendix Exhibit 9, at page A13.

5. Substantive constitutional issues are involved and are raised by the Petitioner in the original *Complaint*, in the *Brief for the Appellant*, in the *Reply Brief for the Appellant*, and in the *Petition for Rehearing*. The constitutional questions raised in the instant action is substantial: Whether the Virginia mechanics' lien law (*Virginia Code §43-1* through *§43-23.2*), *on its face*, and whether certain associated Virginia judicial procedures violate the Due Process or Equal Protection clauses of the 14th Amendment of the federal Constitution, as interpreted by *Connecticut v. Doehr, supra*. The questions are not frivolous.

6. Even if either the federal district court or the Fourth Circuit court of appeals were to have held that the constitutional questions raised in the instant action are frivolous, such holding would not defeat the requirement that certification issue.[81]

7. It was the duty of the federal district court and of the Fourth Circuit court, (prescribed by 28 USC §2403 (b) and supported by the holdings of law in *Wallach v. Lieberman* and *Merrill v. Addison*, quoted in footnote below) not subject to

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[81] a. "Under 28 USCS §2403, it is required that a district court, even though it finds that a constitutional question is frivolous, give notice to the Attorney General, leaving to him the decision whether to intervene." [*Wallach v. Lieberman*, 366 F.2d 254, 10 FR Serv 2d 747, 2 ALR Fed 969 (C.A.2, N.Y., 1966), cited in 28 USCS §2403, note 7, "Discretion," at 454.]
b. "Certification under 28 USCS §2403(b) is duty of court that should not be ignored, even if claim is obviously frivolous or may be disposed of on other grounds." [*Merrill v. Addison*, 763 F. 2d 80 (C.A.2, N.Y., 1985), 28 USCS §2403, note 7, "Discretion," at 454.]

judicial discretion:[82] (a) to certify the instant constitutional challenge; and (b) to notify the Attorney General of Virginia, pursuant to 28 USC §2403 (b).

8. The federal district failed to discharge its statutory *duties* under 28 USC §2403 (b). In so doing, the lower court court: (a) deprived Petitioner wrongfully and permanently of his *entitlement*, granted under federal statute as a matter of federal civil right, to the courts' discharge of these mandatory duties, under 28 USC §2403 (b), and did so without Due Process; and (b) denied Petitioner procedural due process by failing to discharge the court's mandatory duties of 28 USC §2403 (b) certification and notification to the Virginia Attorney General.

9. Petitioner is well aware of the proper response by a federal district court under 28 USC §2403 (b). In another of Petitioner's cases, a civil rights case under 42 USC §1983 against a property owners association, filed in the federal district court for the Western District of Virginia, the federal district judge, *sua sponte*, 14 days after initiation of the suit (and the day immediately following the publication of a story in the newspaper about the Petitioner's suit), entered an *order*: (a) certifying the constitutional challenge, and (b) notifying the Attorney General of Virginia.

10. Thus, this instant *ex parte* action containing a challenge to the constitutionality of a Virginia statute was accorded unequal treatment by the federal district court for the Eastern District of Virginia as compared to the Petitioner's civil rights suit in the Western District of Virginia, also containing a challenge to the constitutionality of a Virginia statute, where the Western District trial court has discharged its 28 USC §2403 (b) duties and done so *sua sponte* and promptly.

The following demonstrates the November 18, 1994, order, the June 19, 1995, opinion, and the August 10, 1995, order are void for lack of jurisdiction—

11. On its face, the November 18, 1994, *dismissal order* fails to set forth that the federal district court has performed its mandatory jurisdictional duties under 28 USC §2403 (b). See

[82] 28 USCS §2403, note 7, "Discretion," at page 454, discloses no holdings to the contrary.

copy of the November 18, 1994, *dismissal order* reproduced as Appendix Exhibit 23, at page A45.

12. The federal district court failed for five months to discharge its 28 USC §2403 (b) duty, *sua sponte*.

13. The district trial judge denied Petitioner's motion for the court to determine any necessary defendants and to declare any service requirements. In so doing, and in light of the trial judge's subsequent dismissal for Petitioner's purported failure to properly serve representatives of the State of Virginia, the trial judge failed to render the assistance due a *pro se* litigant, in accordance with *Gordon v. Leeke*, 574 F.2d 1147, 1152-53 (4th Cir.), cert. denied, 439 U.S. 970 (1978), to bring necessary parties before the court.

14. By the Fourth Circuit court of appeals dismissing the instant action for Petitioner's purported failure to serve the defendants in an *ex parte* action, the Fourth Circuit court failed to render the assistance due a *pro se* litigant, in accordance with *Gordon v. Leeke, supra.*

15. On their faces, the June 19, 1995, *opinion* and August 10, 1995, *order* fail to set forth that the Fourth Circuit court of appeals performed its mandatory jurisdictional duties under 28 USC §2403 (b), to certify the constitutional challenge to a Virginia statute and associated Virginia judicial procedures, even though the Clerk's February 28, 1995, letter to the Attorney General of Virginia did constitute notice comporting with 28 USC §2403 (b), but did not constitute the judicial event of certification. **See** copies of the June 19, 1995, *opinion* and August 10, 1995, *order* denying rehearing reproduced as Appendix Exhibit 2 and 3, respectively, at pages A3-A5.

16. The Fourth Circuit court failed and refused for four months to discharge its mandatory 28 USC §2403 (b) duties.

17. Drawing upon analogy to the principle that a single judge lacks jurisdiction to dismiss a three-judge matter, without making certain jurisdictional determinations, the Petitioner argues that both the trial judge and the circuit judges were without jurisdiction to dismiss either the instant action, or the instant appeal, or the *petition for rehearing*, without discharging

the federal courts' mandatory duties under 28 USC §2403 (b), which duties are not subject to judicial discretion.[83] Petitioner asserts that his argument is supported by the holdings of law in *Wallach v. Lieberman* and *Merrill v. Addison*, quoted in footnote below.[84]

Exhibit 29 Details of Tampering and Falsification of the Record on Appeal in the Instant Action

As to the federal district court record on appeal—

1. One or more persons at the federal district court wrongfully tampered and falsified the record on appeal in the instant *ex parte* action, as follows:

a. The January 11, 10:06 am *civil docket summary* and its associated "Notice of Filing" *transmittal form* transmitted by the federal district court to the Fourth Circuit court of appeals:

(1) misrepresents the nature of the federal question involved as a "Civil Rights Violation," rather than as a challenge to a state statute;

(2) misrepresents the instant *ex parte* action as a *bi partes* suit;

(3) misrepresents that the federal district court sent copies of the *notice of appeal* to the *ex relatu* defendants;

(4) misrepresents by omission the Appellant's filing and timeliness of his December 22, 1994, *transcript order* for the transcript concerning the November 18, 1994, hearing;

(5) conceals the fact that a three-judge court has been requested formally in the June 23, 1994, *Complaint*, in accordance with 28 USC §2284.

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[83] 28 USCS §2403, note 7, "Discretion," at page 454, discloses no holdings to the contrary.

[84] a. "Under 28 USCS §2403, it is required that a district court, even though it finds that a constitutional question is frivolous, give notice to the Attorney General, leaving to him the decision whether to intervene." [*Wallach v. Lieberman*, 366 F.2d 254, 10 FR Serv 2d 747, 2 ALR Fed 969 (C.A.2, N.Y., 1966), cited in 28 USCS §2403, note 7, "Discretion," at 454.]

b. "Certification under 28 USCS §2403(b) is duty of court that should not be ignored, even if claim is obviously frivolous or may be disposed of on other grounds." [*Merrill v. Addison*, 763 F. 2d 80 (C.A.2, N.Y., 1985), 28 USCS §2403, note 7, "Discretion," at 454.]

b. The February 8, 11:02 am *civil docket summary* and its associated "Transmittal of Record" *transmittal form* transmitted by the federal district court to the Fourth Circuit court of appeals continues the same five deficiencies contained in the January 11, 10:06 am set of documents, as described above. In addition, the February 8, 11:02 am set of documents contains three additional deficiencies, in that this set of documents:

(1) misrepresents by statement that the record is certified, despite the nonexistence in the record of any certification or annexed authentication form complying with 28 USC §1738 or with F.R.E. 901 or F.R.E. 902;

(2) misrepresents by statement and by implication that the record transmitted to the Fourth Circuit court of appeals is complete and that all material documents have been transmitted to the Fourth Circuit court of appeals;

(3) failed to correct the record as to earlier material concealments, material omissions, and misrepresentations, occurring in the January 11, 10:06 am docket summary and in the January 11, 1995, "Notice of Filing," *transmittal sheet.*

2. Specifically, one or more persons at the federal district court wrongfully created, in the record on appeal of the instant action, as transmitted, by means of the above-stated procedural due process misrepresentations and omissions, **three procedural traps** for the Petitioner, as appellant, **four material concealments**, and **four material misrepresentations,** so as to confuse the record of the case to such an extent that the appeal would be disposed of on any one of a number of improper procedural rulings, so as to preclude any hearing on the merits. The circumstances of the tamperings are categorized into 11 procedural due process denials, the descriptions and effects of which are detailed in Petitioner's motion seeking correction and certification of the record, dated July 10, 1995, to the Fourth Circuit court of appeals, which the Fourth Circuit court denied in footnote to its June 19, 1995, *opinion.*

As to the Fourth Circuit court's records—

3. The Fourth Circuit court of appeals could not presume regularity in its review of the federal district court record on appeal, in light of Petitioner's two motions: (a) complaining of the false, fraudulent, tampered, incomplete, *uncertified* federal district court record; (b) alleging criminal activity by federal

court employees against Petitioner's instant action; and (c) requesting correction and certification of the federal district court record.

4. The Fourth Circuit court of appeals has relied upon the false record of the federal district court and has perpetuated (in Fourth Circuit court records) one or more of the misrepresentations and omissions, constituting three procedural traps, four material concealments, and four material misrepresentations, created in the federal district court's false record in the instant action, to the effect that the Fourth Circuit court records in the instant action are tainted and false, to the constitutional detriment of Petitioner.

5. One or more persons at the Fourth Circuit court wrongfully tampered and falsified the civil docket summary in the instant *ex parte* action, as follows:

a. The May 2, 1995, 11:23 am *civil docket summary* in the instant action, of which Petitioner has a purchased, court-certified copy from the Fourth Circuit:

(1) misrepresents the instant *ex parte* action wrongfully as a *bi partes* suit;

(2) misrepresents, in the 2/28/95 entry, that Petitioner's "motion requesting Rule 44 inquiries was sent to counsel for appellee," when the *civil docket summary* lists neither counsel nor addresses of counsel or of the purported appellees on page 2, where the official court addresses for parties are maintained;

(3) misrepresents, in the 3/16/95 entry, the Petitioner's motion to sever *ex relatu* defendants, who were not named or declared or judicially-joined defendants — mischaracterizing the motion by the wrongful characterization as a motion to amend the caption;

(4) misrepresents, in the 3/21/95 entry, that copies of Clerk Order "deferring action on motion to amend caption" were sent to all counsel, implying that there are counsels representing parties, when there are no counsels involved, no appellees, and Petitioner is *pro se*.

b. Petitioner has not yet had the opportunity to obtain a more-current version of the Fourth Circuit *civil docket summary*.